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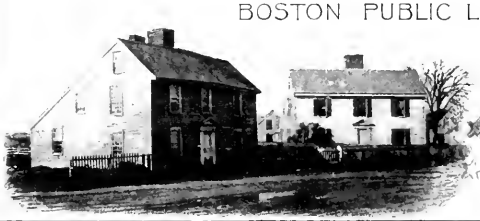

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1911

SECRET JOURNALS

OF

THE ACTS AND PROCEEDINGS

OF

CONGRESS,

FROM THE FIRST MEETING THEREOF TO THE DISSOLUTION OF THE CONFEDERATION, BY THE ADOPTION OF THE CONSTITUTION OF THE UNITED STATES.

Published under the direction of the President of the United States, conformably to Resolution of Congress of March 27, 1818, and April 21, 1820.

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SECRET JOURNALS

OF THE

CONGRESS OF THE CONFEDERATION.

FOREIGN AFFAIRS.

SECRET JOURNAL.

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FOREIGN AFFAIRS.

MAY 17, 1786.

CONGRESS took into consideration a treaty of amity and commerce between his majesty the king of Prussia and the United States of America, and adopted and ratified the same, nine states being present, in the manner following:

The United States of America, in Congress assembled—To all to whom these presents shall come, Greeting.

Whereas a treaty of amity and commerce between his majesty the king of Prussia and the United States of America, was concluded and signed by the plenipotentiaries of the said United States, and by the plenipotentiary of his said majesty, duly and respectively authorized for that purpose, at the places of their respective residence, and at the dates expressed under their several signatures, which said treaty, written both

in the American and the French languages, is in the words following, to wit:

Traite d'Amitie et de Commerce, entre sa Majesté le Roi de Prusse, et les Etats Unis de l'Amérique.

Sa majesté le roi de Prusse, &c. &c. et les Etats Unis de l'Amérique, désirant de fixer d'une manière permanente et équitable les régles qui doivent être observées relativement à la correspondance et au commerce à établir entre les etats respectifs des deux parties; sa majesté et les Etats Unis ont cru ne pouvoir mieux remplir ce but, qu'en posant pour base de leurs engagemens la plus parfaite égalité et reciprocité.

Dans cette vuë sa majesté le roi de Prusse a nommé et constitué pour son plénipotentiaire le baron Frédéric Guillaume de Thulemeier, son conseiller privé d'ambassade et envoyé extraordinaire auprès de leurs hautes puissances les etats généraux des Provinces Unies; et les Etats Unis ont de leur côté pourvu de leurs pleinpouvoirs le sieur John Adams, ci-devant l'un de leurs ministres plénipotentiaires pour traiter de la paix, delegué au congrès de la part de l'etat de Massachusetts, et chef de justice du dit etat, actuellement ministre plénipotentiaire des Etats Unis près sa majesté le roi de la Grand Brétagne; le docteur Benjamin Franklin, en dernier lieu leur ministre plénipotentiaire à la cour de sa majesté très chrétienne, et aussi l'un de leurs ministres plénipotentiaires pour traiter de la paix; et le sieur Thomas Jefferson, ci-devant délegué au congrès de la part de l'etat de Virginie et gouverneur du dit etat, actuellement ministre plénipotentiaire à la cour de sa majesté très chré-

tienne, lesquels plénipotentiaires respectifs, après avoir échangé leurs pleinpouvoirs, et en consequence d'une mure déliberation, ont conclu, arrêté et signé les articles suivans:

ARTICLE I.

Il y aura une paix ferme, inviolable, et universelle, et une amitié sincère, entre sa majesté le roi de Prusse, ses héritiers, successeurs, et sujets, d'une part, et les Etats Unis d'Amérique, et leurs citoyens, d'autre part, sans exception de personnes ou de lieux.

ARTICLE II.

Les sujets de sa majesté le roi de Prusse pourront fréquenter toutes les côtes et tous les pays des Etats Unis de l'Amérique, y résider et trafiquer en toutes sortes de productions, manufactures, et marchandises, et ne payeront d'autres ni de plus forts impôts, charges ou droits, dans les dits Etats Unis, que ceux que les nations les plus favorisées sont, ou seront obligées de payer; et ils jouiront de tous les droits, priviléges et exemptions dans la navigation et le commerce, dont jouit ou jouira la nation la plus favorisée; se soumettant néanmoins aux loix et usages y établis, et auxquels sont soumis les citoyens des Etats Unis et les citoyens et sujets des nations le plus favorisées.

ARTICLE III.

Pareillement, les citoyens des Etats Unis de l'Amérique pourront fréquenter toutes les côtes et tous les

pays de sa majesté le roi de Prusse, y resider et trafiquer en toutes sortes de productions, manufactures et marchandises, et ne payeront d'autres ni plus forts impôts, charges ou droits, dans les domaines de sa dite majesté, que ceux que la nation la plus favorisée est, ou sera obligée de payer, et ils jouiront des tous les droits, priviléges et exemptions dans la navigation et le commerce, dont jouit ou jouira la nation la plus favorisée; se soumettant néanmoins aux lois et usages y établis, et aux quels sont soumis les sujets de sa majesté le roi de Prusse, et les sujets et citoyens des nations les plus favorisées.

ARTICLE IV.

En particulier, chacune des deux nations aura le droit d'importer ses propres productions, manufactures et marchandises, à bord de ses propres bâtimens ou de tel autre, dans toutes les parties des domaines de l'autre, où il sera permis à tous les sujets et citoyens de l'autre nation de les acheter librement; comme aussi d'y charger les productions, manufactures, et marchandises de l'autre, que tous les dits sujets ou citoyens auront la liberté de leur vendre; en payant dans l'un et l'autre cas, tels impôts, droits et charges seulement, que ceux qui sont ou seront payés par la nation la plus favorisée. Cependant, le roi de Prusse et les Etats Unis de l'Amérique, et chacun d'eux en particulier, se reservent le droit, au cas que quelque nation restreigne le transport des marchandises aux vaisseaux des pays dont elles sont la production ou la

manufacture, d'établir envers cette nation des réglemens reciproques. Se reservant de plus le droit de prohiber dans leurs pays respectifs l'importation ou l'exportation de toute marchandise quelconque, des que la raison d'etat l'exige. En ce cas, les sujets ou citoyens d'une des parties contractantes ne pourront importer ni exporter les marchandises prohibées par l'autre. Mais si l'une des parties contractantes permet à quelqu'autre nation d'importer ou d'exporter ces mêmes marchandises, les citoyens ou sujets de l'autre partie contractante jouiront tout aussitôt d'une liberté pareille.

ARTICLE V.

Les marchands, commandans de vaisseaux, et autres sujets ou citoyens de chacune des deux nations, ne seront pas forcés dans les ports ou dans la jurisdiction de l'autre, de décharger aucune sorte de marchandises dans d'autres vaisseaux, ni de les recevoir à bord de leurs propres navires, ni d'attendre leur chargement plus long-temps qu'il ne leur plaira.

ARTICLE VI.

Pour eviter que les vaisseaux de l'une des deux parties contractantes ne soyent point inutilement molestés ou detenus dans les ports ou sous la jurisdiction de l'autre, il a été convenu que la visite des marchandises, ordonnée par les loix, se fera avant qu'elles ne soyent chargées sur la navire, et qu'ensuite elles ne seront plus assujetties à aucune visite. Et en général

il ne se fera point de recherche à bord du vaisseau, à moins qu'on n'y ait chargé clandestinement et illégalement des marchandises prohibées. Dans ce cas, celui par l'ordre duquel elles ont été portées à bord, ou celui qui les y a portées sans ordre, sera soumis aux loix du pays où il se trouve, sans que le reste de l'équipage soit molesté, ni les autres marchandises, ou le vaisseau, saisis ou detenus par cette raison.

ARTICLE VII.

Chacune des deux parties contractantes tâchera, par tous les moyens qui seront en son pouvoir, de protéger et de défendre tous les vaisseaux et autres effets appartenans aux citoyens ou sujets de l'autre, et se trouvant dans l'etendue de sa jurisdiction par mer ou par terre : et elle employera tous ses efforts pour recouvrer et faire restituer aux propriétaires légitimes les vaisseaux et effets qui leur auront été enlevés dans l'etendue de sa dite jurisdiction.

ARTICLE VIII.

Les vaisseaux des sujets ou citoyens d'une des deux parties contractantes, arrivant sur une côte appartenante à l'autre, mais n'ayant pas dessein d'entrer au port, ou y étant entrés, ne désirant pas de decharger leurs cargaisons, ou de rompre leur charge, auront la liberté de repartir et de poursuivre leur route sans empêchement, et sans être obligés de rendre compte de leur cargaison, ni de payer aucuns impôts, charges et droits quelconques, excepté ceux établis sur les

vaisseaux une fois entrés dans le port, et destinés à l'entretien du port même, ou à d'autres établissemens, qui ont pour but la sûreté et la commodité des navigateurs; lesquels droits, charges, et impôts, seront les mêmes et se payeront sur le même pied qu'ils sont acquittés par les sujets ou citoyens de l'etat où ils sont établis.

ARTICLE IX.

Au cas que quelque vaisseau appartenant à l'une des deux parties contractantes auroit fait naufrage, échoué, ou souffert quelque autre dommage sur les côtes ou sous la domination de l'autre, les sujets ou citoyens respectifs recevront, tant pour eux que pour leurs vaisseaux et effets, la même assistance qui auroit été fournie aux habitans du pays où l'accident arrive; et ils payeront seulement les mêmes charges et droits, auxquels les dits habitans auroient été assujettis en pareil cas. Et si la réparation du vaisseau exigeoit que la cargaison fût déchargée en tout ou en partie, ils ne payeront aucun impôt, charge ou droit, de ce qui sera rembarqué et emporté. L'ancien et barbare droit de naufrage sera entièrement aboli à l'égard des sujets ou citoyens des deux parties contractantes.

ARTICLE X.

Les citoyens ou sujets de l'une des deux parties contractantes, auront dans les états de l'autre, la liberté de disposer de leurs biens personnels, soit par testament, donation ou autrement, et leurs héritiers étant

sujets ou citoyens de l'autre partie contractante, succéderont à leurs biens, soit en vertu d'un testament, ou *ab intestato*, et ils pourront en prendre possession, soit en personne, soit par d'autres agissant en leur place, et en disposeront à leur volonté, en ne payant d'autres droits que ceux aux-quels les habitants du pays où la succession est devenue vacante, sont assujettis en pareille occurrence. Et en cas d'absence des héritiers, on prendra aussi longtemps, des biens qui leur sont échus, les mêmes soins qu'on auroit pris en pareille occasion des biens des natifs du pays, jusqu'à ce que le propriétaire légitime ait agrée des arrangemens pour recueil ir l'héritage. S'il s'éleve des contestations entre différens pretendans ayant droit à la succession, elles seront décidées en dernier ressort selon les loix et par les juges du pays où la succession est vacante. Et si par la mort de quelque personne possédant des biens-fonds sur le territoire de l'une des parties contractantes, ces biens-fonds venoient à passer, selon les loix du pays, à un citoyen ou sujet de l'autre partie, si celui-ci, par sa qualité d'étranger il est inhabile de les posséder, obtiendra un delai convenable pour les vendre et pour en retirer le provenu, sans obstacle, exempt de tout droit de retenue, de la part du gouvernement des etats respectifs. Mais cet article ne derogera en aucune manière à la force des lois qui ont déja été publiées ou qui le seront dans la suite, par sa majesté le roi de Prusse, pour prevenir l'emigration de ses sujets.

ARTICLE XI.

Il sera accordé la plus parfaite liberté de conscience et de culte aux citoyens et sujets de chaque partie contractante dans le etats de l'autre, et personne ne sera molesté à cet égard pour quelque cause qué ce soit, si ce n'est pour insulte faite à la religion de l'autre. De plus, si des sujets et citoyens de l'une des parties contractantes venoient à mourir dans la jurisdiction de l'autre, leurs corps seront enterrés dans les endroits où l'on a coutume de faire les enterremens, ou dans tel autre lieu décent et convenable, et ils seront protegés contre toute violence et trouble.

ARTICLE XII.

Si l'une des parties contractantes étoit en guerre avec une autre puissance, la libre correspondance et le commerce des citoyens ou sujets de la partie qui demeure neutre envers les puissances belligérantes, ne seront point interrompus. Au contraire, et dans ce cas, comme en pleine paix, les vaisseaux de la partie neutre, pourront naviguer en toute sûreté dans les ports et sur les côtes des puissances belligérantes, les vaisseaux libres rendant les marchandises libres, en tant qu'on regardera comme libre tout ce que sera à bord d'un navire appartenante à la partie neutre, quand même ces effets appartiendroient à l'ennemi de l'autre. La même liberté s'étendra aux personnes qui se trouveront à bord d'un vaisseaux libre, quand mêmes elles seroient ennemis de l'autre partie, excepté que ce fus-

sent des gens de guerre, actuellement au service de l'ennemi.

ARTICLE XIII.

Dans le cas ou l'une des parties contractantes se trouveroit en guerre avec une autre puissance, il a été convenu que pour prevenir les difficultés et les discussions qui surviennent ordinairement par rapport aux marchandises ci-devant appellées de contrebande, telles que armes, munitions, et autres provisions de guerre de toute espèce, aucun de ces articles, chargés à bord des vaisseaux des citoyens ou sujets de l'une des parties, et destinés pour l'ennemi de l'autre, ne sera censé de contrebande, au point d'impliquer confiscation ou condamnation, et d'entrainer la perte de la propriété des individus. Néanmoins il sera permis d'arrêter ces sortes de vaisseaux et effets et de les retenir pendant tout le temps que le preneur croira nécessaire pour prévenir les inconveniens et le dommage qui pourroient en resulter autrement; mais dans ce cas on accordera une compensation raisonable pour les pertes qui auront été occasionnées par la saisie. Et il sera permis en outre aux preneurs d'employer a leur service, en tout, ou en partie, les munitions militaires détenues, en payant aux propriétaires la pleine valeur, à déterminer sur le prix qui aura cours à l'endroit de leur destination; mais que dans le cas énoncé, d'un vaisseau arrêté pour des articles ci-devant appellés contrebande, si le maître du navire consentoit à delivrer les marchandises suspectes, il aura liberté de le faire, et le navire ne sera plus amené dans le port, ni

détenu plus longtemps, mais aura toute liberté de poursuivre sa route.

ARTICLE XIV.

Dans le cas où l'une des deux parties contractantes se trouveroit engagée dans une guerre avec une autre puissance, et afin que les vaisseaux de la partie neutre soyent promptement et sûrement reconnus, on est convenu qu'ils devront être munis de lettres de mer ou passeports, expriment le nom, le propriétaire, et le port du navire, ainsi que le nom et la demeure du maître. Ces passeports, qui seront expédiés en bonne et due forme (à déterminer par des conventions entre les parties, lorsque l'occasion le requerra) devront être renouvellés toutes les fois que le vaisseau retournera dans son port, et seront exhibés à chaque requisition tant en pleine mer que dans le port. Mais si le navire se trouve sous le convoi d'un ou plusieurs vaisseaux de guerre appartenants à la partie neutre, il suffira que l'officier commandant du convoi déclare que le navire est de son parti moyennant quoi cette simple déclaration sera censée établir le fait, et dispensera les deux parties de toute visite ultérieure.

ARTICLE XV.

Pour prévenir entièrement tout désordre et toute violence en pareil cas, il a été stipulé que lorsque des navires, de la partie neutre, navigans sans convoi, rencontreront quelque vaisseau de guerre public ou particulier de l'autre partie, le vaisseau de guerre n'appro-

chera le navire neutre qu'au delà de la portée du canon, et n'enverra pas plus de deux ou trois hommes dans sa chaloupe à bord, pour examiner les lettres de mer ou passeports. Et toutes les personnes appartenantes quelque vaisseau de guerre public ou particulier, qui molesteront ou insulteront en quelque manière que ce soit l'équipage, les vaisseaux ou effets de l'autre partie, seront responsables en leurs personnes et en leurs biens, de tous dommages et intérêts; pour lesquels il sera donné caution suffisante par tous les commandans de vaisseaux armés en course, avant qu'ils reçoivent leurs commissions.

ARTICLE XVI.

Il a été convenu que les sujets ou citoyens de l'une des parties contractantes, leurs vaisseaux ni effets, ne pourront être assujettis à aucun embargo, ni retenus de la part de l'autre pour quelque expédition militaire, usage public ou particulier de qui que ce soit. Et dans les cas de saisie, de détention, ou d'arrêt, soit pour dettes contractées, ou offenses commises par quelque citoyen ou sujet de l'une des parties contractantes dans la jurisdiction de l'autre, on procédera uniquement par ordre et autorité de la justice et suivant les voyes ordinaires en pareil cas usitées.

ARTICLE XVII.

S'il arrivoit que les bâtimens ou effets de la puissance neutre fussent pris par l'ennemi de l'autre, ou par un pirate, et ensuite repris par la puissance en guerre, ils seront conduits dans un port de l'une des

deux parties contractantes et remis à la garde des officiers du port, afin d'être restitués en entier au propriétaire légitime, des qu'il aura duement constaté son droit de propriété.

ARTICLE XVIII.

Lorsque les citoyens ou sujets de l'une des deux parties contractantes seront forcés par des tempêtes, par la poursuite des corsaires ou vaisseaux ennemis, ou par qualqu'autre accident, à se réfugier avec leurs vaisseaux ou effets dans les havres, ou dans la jurisdiction de l'autre, ils seront reçus, protégés et traités avec humanité et honnêteté. Il leur sera permis de se pourvoir à un prix raisonable de rafranchissemens, de provisions et de toutes choses nécessaires pour leur subsistance, santé et commodité, et pour la reparation de leurs vaisseaux.

ARTICLE XIX.

Les vaisseaux de guerre publics et particuliers des deux parties contractantes, pourront conduire en toute liberté, par tout où il leur plaira, les vaisseaux et effets qu'ils auront pris sur leurs ennemis, sans être obligés de payer aucuns impôts, charges ou droits aux officiers de l'amirauté, des douanes ou autres. Ces prises ne pourront être non plus ni arrêtées, ni visitées, ni soumises à des procédures légales, en entrant dans le port de l'autre partie, mais elles pourront en sortir librement, et être conduites en tout temps par le vaisseau preneur aux endroits portés par les commissions, dont l'officier

commandant le dit vaisseau sera obligé de faire montre. Mais tout vaisseau qui aura fait des prises sur les sujets de sa majesté très chrétienne la roi de France, ne sauroit obtenir un droit d'asile dans les ports ou havres des Etats Unis; et s'il étoit forcé d'y entrer par des tempêtes ou dangers de mer, il sera obligé d'en repartir le plutôt possible, conformément à la teneur des traités subsistants entre sa majesté très chrétienne et les Etats Unis.

ARTICLE XX.

Aucun citoyen ou sujet de l'une des deux parties contractantes n'acceptera d'une puissance avec laquelle l'autre pourroit être en guerre, ni commission, ni lettre de marque, pour armer en course contre cette derniere, sous peine d'être puni comme pirate. Et ni l'un ni l'autre des deux etats ne louera, prêtera ou donnera une partie de ses forces navales ou militaires à l'ennémi de l'autre, pour l'aider à agir offensivement ou défénsivement contre l'etat qui est en guerre.

ARTICLE XXI.

S'il arrivoit que les deux parties contractantes fussent en même temps en guerre contre un ennemi commun, on observera de part et d' autr eles points suivants:

1. Si les bâtimens de l'une des deux nations repris par les armateurs de l'autre, n'ont pas été au pouvoir de l'ennemi au de là de vingt-quatre heures, ils seront restitués au premier propriétaire moyennant le paye-

ment du tiers de la valeur du bâtiment et de la cargaison : si au contraire le vaisseau repris a été plus de vingt-quatre heures au pouvoir de l'ennemi, il appartiendra en entier à celui qui l'a repris. 2. Dans le cas qu'un navire est repris par un vaisseau de guerre de l'une des puissances contractantes, il sera rendu au propriétaire, moyennant qu'il paye un trentième du navire et de la cargaison, si le bâtiment n'a pas été plus de vingt-quatre heures au pouvoir de l'ennemi, et le dixième de cette valeur, si'l y a été plus long-temps, lesquelles sommes seront distribuées en guise de gratification a ceux qui l'auront repris. 3. Dans ces cas la restitution n'aura lieu qu'après les preuves faites de la propriété, sous caution de la quote-part qui en revient a celui qui a repris le navire. 4. Les vaisseaux de guerre publics et particuliers des deux parties contractantes seront admis réciproquement avec leurs prises dans les ports respectifs ; cependant ces prises ne pourront y être dechargées ni vendues, qu'après que la légitimité de la prise aura été decidée suivant les loix et réglemens de l'etat dont le preneur est sujet, mais par la justice du lieu où la prise aura été conduite. 5. Il sera libre à chacune des parties contractantes de faire tels réglemens qu' elles jugeront nécessaires, relativement à la conduite que devront tenir respectivement leurs vaisseaux de guerre publics et particuliers, à l'égard des bâtimens qu'ils auront pris et amenés dans les ports des deux puissances.

ARTICLE XXII.

Lorsque les parties contractantes seront engagées en guerre contre un ennemi commun, ou qu' elles seront neutres toutes deux, les vaisseaux de guerre de l'une prendront en toute occasion, sous leur protection, les navires de l'autre, qui sont avec eux la même route, et ils les defendront, aussi long-temps qu'ils feront voile ensemble, contre toute force et violence et de la même manière qu'ils protégeroient et défendroient les navires de leur propre nation.

ARTICLE XXIII.

S'il survient une guerre entre les parties contractantes, les marchands de l'un des deux etats qui resideront dans l'autre, auront la permission d'y rester encore neuf mois, pour recueillir leurs dettes actives, et arranger leurs affaires, après quoi ils pourront partir en toute liberté et emporter tous leurs biens, sans être molestés ni empêchés. Les femmes et les enfans, les gens de lettres de toutes les facultés, les cultivateurs, artisans, manufacturiers et pêcheurs, qui ne sont point armés et qui habitent des villes, villages ou places qui ne sont pas fortifiés, et en général tous ceux dont la vocation tend à la subsistance et à l'avantage commun du genre humain, auront la liberté de continuer leurs professions respectives, et ne seront point molestés en leurs personnes, ni leurs maisons, ou leurs biens incendiés, ou autrement detruits, ni leurs champs ravagés

par les armées de l'ennemi au pouvoir duquel ils pourroient tomber par les évenemens de la guerre; mais si l'on se trouve dans la necessité de prendre quelque chose de leurs propriétés pour l'usage de l'armée ennemie, la valeur en sera payée à un prix raisonnable. Tous les vaisseaux marchands et commerçans, employés à l'échange des productions de différens endroits, et par consequent destinés à faciliter et repandre les necessités, les commodités et les douceurs de la vie, passeront librement et sans être molestés. Et les deux puissances contractantes s'engagent à n'accorder aucune commission à des vaisseaux armés en course, qui les autorisât à prendre ou à détruire ces sortes de vaisseaux marchands, ou à interrompre le commerce.

ARTICLE XXIV.

Afin d'adoucir le sort des prisonniers de guerre, et ne les point exposer à être envoyés dans des climats éloignés et rigoureux, ou reserrés dans des habitations étroités et malsaines, les deux parties contractantes s'engagent solemnellement l'une envers l'autre, et a la face de l'univers, qu'elles n'adopteront aucun de ces usages; que les prisonniers qu'elles pourroient faire l'une sur l'autre ne seront transportés ni aux Indes Orientales, ni dans aucune contrée de l'Asie ou de l'Afrique, mais qu'on leur assignera en Europe ou en Amérique, dans les territoires respectifs des parties contractantes, un séjour situé dans un air sain; qu'ils ne seront point confinés dans des cachots, ni dans des prisons, ni dans des vaisseaux de prison; qu'ils ne seront pas mis aux fers, ni garrottés, ni autrement privés de l'usage de leurs

membres ; que les officiers seront relâchés sur leur parole d'honneur, dans l'enceinte de certains districts qui leur seront fixés, et qu'on leur accordera des logemens commodes ; que les simples soldats seront distribués dans des cantonnemens ouverts, assez vastes pour prendre l'air et l'exercice, et qu'ils seront logés dans des barraques aussi spacieuses et aussi commodes que le sont celles des troupes de la puissance au pouvoir de la quelle se trouvent les prisonniers. Que cette puissance fera pourvoir journellement les officiers d'autant de rations, composées des mêmes articles et de la même qualité, dont jouissent en nature ou en équivalent, les officiers du même rang qui sont à son propre service ; qu'elle fournira également à tous les autres prisonniers une ration pareille à celle qui est accordée au soldat de sa propre armée. Le montant de ces dépenses sera payé par l'autre puissance, d'aprés une liquidation de compte à arrêter reciproquement pour l'entretien des prisonniers à la fin de la guerre ; et ces comptes ne seront point confondus ou balancés avec d'autres comptes, ni la solde qui en est due, retenue comme compensation ou représailles, pour tel autre article ou telle autre prétention réelle ou supposée. Il sera permis à chacune des deux puissances d'entretenir un commissaire de leur choix ; dans chaque cantonnement des prisonniers qui sont au pouvoir de l'autre ; ces commissaires auront la liberté de visiter les prisonniers, aussi souvent qu'ils le desireront ; ils pourront également recevoir et distribuer les douceurs que les parens ou amis des prisonniers leur feront parvenir. Enfin il leur sera libre encore de faire leurs rapports par lettres ouvertes, à ceux qui les em-

ployent ; mais si un officier manquoit à sa parole d'honneur, ou qu'un autre prisonnier sortit des limites qui auront été fixées à son cantonnement, un tel officier ou un autre prisonnier sera frustré individuellement des avantages stipulés dans cet article, pour sa relaxation sur parole d'honneur ou pour son cantonnement. Les deux puissances contractantes ont declaré en outre, que, ni le prétexte que la guerre rompt les traités, ni tel autre motif quelconque, ne seront censés annuller ou suspendre cet article et le précédent ; mais qu'au contraire le temps de la guerre est précisément celui pour lequel ils ont été stipulés et durant lequel ils seront observés aussi saintement que les articles les plus universellement reconnus par le droit de la nature et des gens.

ARTICLE XXV.

Les deux parties contractantes se sont accordé mutuellement la faculté de tenir dans leurs ports respectifs, des consuls, vice consuls, agens et commissaires de leur choix et dont les fonctions seront determinées par un arrangement particulier, lorsque l'une des deux puissances aura nommé à ces postes. Mais dans le cas que tel, ou autre de ces consuls, veuille faire le commerce, il sera soumis aux mêmes loix et usages, auxquels sont soumis les particuliers de sa nation à l'endroit où il réside.

ARTICLE XXVI.

Lorsque l'une des deux parties contractantes accordera dans la suite quelque faveur particulière en fait

de navigation ou de commerce à d'autres nations, elle deviendra aussitôt commune à l'autre partie contractante, et celle-ci jouira de cette faveur, gratuitement, si la concession est gratuite, ou en accordant la même compensation si la concession est conditionelle.

ARTICLE XXVII.

Sa majesté le roi de Prusse et les Etats Unis de l'Amérique sont convenus que le présent traité aura son plein effet pendant l'espace de dix ans à compter du jour de l'échange des ratifications, et que si l'expiration de ce terme arrivoit dans le cours d'une guerre entre eux, les articles ci-dessus stipulés pour régler leur conduite en temps de guerre, conserveront toute leur force, jusqu'à la conclusion du traité qui retablira la paix. Le présent traité sera ratifié de part et d'autre, et les ratifications seront échangées, dans l'espace d'une année, à compter du jour de la signature.

En foi de quoi, les plénipotentiaires susnommés ont signé le présent traité et y ont apposé le cachet de leurs armes, aux lieux de leur domicile respectif, ainsi qu'il sera exprimé ci-dessous.

B. FRANKLIN, [L. S.]
Passy, July 9, 1785.
TH. JEFFERSON, [L. S.]
Paris, July 28, 1785.
JOHN ADAMS, [L. S.]
London, August 5, 1785.
F. G. DE THULEMEIER, [L. S.]
A la Haye, le 10 Septembre, 1785.

A Treaty of Amity and Commerce, between his Majesty the King of Prussia, and the United States of America.

His majesty the king of Prussia, and the United States of America, desiring to fix, in a permanent and equitable manner, the rules to be observed in the intercourse and commerce they desire to establish between their respective countries; his majesty and the United States have judged that the said end cannot be better obtained, than by taking the most perfect equality and reciprocity for the basis of their agreement.

With this view, his majesty the king of Prussia, has nominated and constituted, as his plenipotentiary, the baron Frederick William de Thulemeier, his privy counsellor of embassy, and envoy extraordinary with their high mightinesses the states general of the United Netherlands; and the United States have, on their part, given full powers to John Adams, esquire, late one of their ministers plenipotentiary for negotiating a peace, heretofore a delegate in Congress from the state of Massachusetts, and chief justice of the same, and now minister plenipotentiary of the United States with his Britannick majesty; doctor Benjamin Franklin, late minister plenipotentiary at the court of Versailles, and another of their ministers plenipotentiary for negotiating a peace; and Thomas Jefferson, heretofore a delegate in Congress from the state of Virginia, and governour of the said state, and now minister plenipotentiary of the United States at the court of his most christian majesty, which respective plenipo-

tentiaries, after having exchanged their full powers, and on mature deliberation, have concluded, settled, and signed the following articles:

ARTICLE I.

There shall be a firm, inviolable, and universal peace and sincere friendship between his majesty the king of Prussia, his heirs, successors, and subjects, on the one part, and the United States of America, and their citizens, on the other, without exception of persons or places.

ARTICLE II.

The subjects of his majesty the king of Prussia may frequent all the coasts and countries of the United States of America, and reside and trade there in all sorts of produce, manufactures, and merchandise; and shall pay within the said United States no other or greater duties, charges, or fees whatsoever, than the most favoured nations are or shall be obliged to pay; and they shall enjoy all the rights, privileges, and exemptions in navigation and commerce, which the most favoured nation does or shall enjoy; submitting themselves, nevertheless, to the laws and usages there established, and to which are submitted the citizens of the United States, and the citizens and subjects of the most favoured nations.

ARTICLE III.

In like manner, the citizens of the United States of America may frequent all the coasts and countries of his majesty the king of Prussia, and reside and trade there in all sorts of produce, manufactures, and merchandise, and shall pay, in the dominions of his said majesty, no other or greater duties, charges, or fees whatsoever, than the most favoured nation is or shall be obliged to pay; and they shall enjoy all the rights, privileges, and exemptions in navigation and commerce, which the most favoured nation does or shall enjoy; submitting themselves, nevertheless, to the laws and usages there established, and to which are submitted the subjects of his majesty the king of Prussia, and the subjects and citizens of the most favoured nations.

ARTICLE IV.

More especially each party shall have a right to carry their own produce, manufactures, and merchandise, in their own or any other vessels, to any parts of the dominions of the other, where it shall be lawful for all the subjects or citizens of that other freely to purchase them; and thence to take the produce, manufactures, and merchandise of the other, which all the said citizens or subjects shall in like manner be free to sell them, paying in both cases such duties, charges, and fees only, as are or shall be paid by the most favoured nation. Nevertheless, the king of Prussia and the

United States, and each of them, reserve to themselves the right, where any nation restrains the transportation of merchandise to the vessels of the country of which it is the growth or manufacture, to establish against such nation retaliating regulations; and also the right to prohibit, in their respective countries, the importation and exportation of all merchandise whatsoever, when reasons of state shall require it. In this case, the subjects or citizens of either of the contracting parties, shall not import nor export the merchandise prohibited by the other; but if one of the contracting parties permits any other nation to import or export the same merchandise, the citizens or subjects of the other shall immediately enjoy the same liberty.

ARTICLE V.

The merchants, commanders of vessels, or other subjects or citizens, of either party, shall not, within the ports or jurisdiction of the other, be forced to unload any sort of merchandise into any other vessels, nor to receive them into their own, nor to wait for their being loaded longer than they please.

ARTICLE VI.

That the vessels of either party loading within the ports or jurisdiction of the other, may not be uselessly harassed or detained, it is agreed, that all examinations of goods required by the laws, shall be made before they are laden on board the vessel, and that there shall be no examination after; nor shall the vessel be

searched at any time, unless articles shall have been laden therein clandestinely and illegally, in which case, the person by whose order they were carried on board, or who carried them without order, shall be liable to the laws of the land in which he is; but no other person shall be molested, nor shall any other goods, nor the vessel, be seized or detained for that cause.

ARTICLE VII.

Each party shall endeavour, by all the means in their power, to protect and defend all vessels, and other effects, belonging to the citizens or subjects of the other, which shall be within the extent of their jurisdiction, by sea or by land; and shall use all their efforts to recover, and cause to be restored to the right owners, their vessels and effects, which shall be taken from them within the extent of their said jurisdiction.

ARTICLE VIII.

The vessels of the subjects or citizens of either party, coming on any coast belonging to the other, but not willing to enter into port, or being entered into port, and not willing to unload their cargoes or break bulk, shall have liberty to depart and to pursue their voyage, without molestation, and without being obliged to render account of their cargo, or to pay any duties, charges, or fees whatsoever, except those established for vessels entered into port, and appropriated to the maintenance of the port itself, or of other establish-

ments for the safety and convenience of navigators; which duties, charges, and fees, shall be the same, and shall be paid on the same footing, as in the case of subjects or citizens of the country where they are established.

ARTICLE IX.

When any vessel of either party shall be wrecked, foundered, or otherwise damaged, on the coasts, or within the dominion of the other, their respective subjects or citizens shall receive, as well for themselves, as for their vessels and effects, the same assistance which would be due to the inhabitants of the country where the damage happens, and shall pay the same charges and dues only, as the said inhabitants would be subject to pay in a like case: and if the operations of repair shall require that the whole or any part of their cargo be unladed, they shall pay no duties, charges, or fees, on the part which they shall relade and carry away. The ancient and barbarous right to wrecks of the sea shall be entirely abolished with respect to the subjects or citizens of the two contracting parties.

ARTICLE X.

The citizens or subjects of each party shall have power to dispose of their personal goods within the jurisdiction of the other, by testament, donation, or otherwise; and their representatives, being subjects or citizens of the other party, shall succeed to their said personal goods, whether by testament or *ab intes-*

tato, and may take possession thereof, either by themselves or by others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein the said goods are, shall be subject to pay in like cases. And in case of the absence of the representative, such care shall be taken of the said goods, and for so long a time, as would be taken of the goods of a native in like case, until the lawful owner may take measures for receiving them. And if question shall arise among several claimants to which of them the said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are. And where, on the death of any person holding real estate within the territories of the one party, such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds without molestation, and exempt from all rights of *detraction* on the part of the government of the respective states. But this article shall not derogate in any manner from the force of the laws already published, or hereafter to be published by his majesty the king of Prussia, to prevent the emigration of his subjects.

ARTICLE XI.

The most perfect freedom of conscience and of worship, is granted to the citizens or subjects of either party, within the jurisdiction of the other, without being liable to molestation in that respect, for any cause other than an insult on the religion of others.

Moreover, when the subjects or citizens of the one party, shall die within the jurisdiction of the other, their bodies shall be buried in the usual burying grounds, or other decent and suitable places, and shall be protected from violation or disturbance.

ARTICLE XII.

If one of the contracting parties should be engaged in war with any other power, the free intercourse and commerce of the subjects or citizens of the party remaining neuter with the belligerent powers, shall not be interrupted. On the contrary, in that case as in full peace, the vessels of the neutral party may navigate freely to and from the ports and on the coasts of the belligerent parties, free vessels making free goods, insomuch, that all things shall be adjudged free which shall be on board any vessel belonging to the neutral party, although such things belong to an enemy of the other; and the same freedom shall be extended to persons who shall be on board a free vessel, although they should be enemies to the other party, unless they be soldiers in actual service of such enemy.

ARTICLE XIII.

And in the same case of one of the contracting parties being engaged in war with any other power, to prevent all the difficulties and misunderstandings that usually arise respecting the merchandise heretofore called contraband, such as arms, ammunition, and military stores of every kind, no such articles carried

in the vessels, or by the subjects or citizens of one of the parties to the enemies of the other, shall be deemed contraband, so as to induce confiscation or condemnation, and a loss of property to individuals. Nevertheless, it shall be lawful to stop such vessels and articles, and to detain them for such length of time as the captors may think necessary to prevent the inconvenience or damage that might ensue from their proceeding; paying, however, a reasonable compensation for the loss such arrest shall occasion to the proprietors. And it shall further be allowed to use in the service of the captors, the whole or any part of the military stores so detained, paying the owners the full value of the same, to be ascertained by the current price at the place of its destination. But in the case supposed, of a vessel stopped for articles heretofore deemed contraband, if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not in that case be carried into any port, nor further detained, but shall be allowed to proceed on her voyage.

ARTICLE XIV.

And in the same case where one of the parties is engaged in war with another power, that the vessels of the neutral party may be readily and certainly known, it is agreed, that they shall be provided with sea letters, or passports, which shall express the name, the property, and burden of the vessel, as also the name and dwelling of the master, which passports shall be made

out in good and due forms, (to be settled by conventions between the parties whenever occasion shall require,) shall be renewed as often as the vessel shall return into port; and shall be exhibited whensoever required, as well in the open sea as in port. But if the said vessels be under convoy of one or more vessels of war, belonging to the neutral party, the simple declaration of the officer commanding the convoy, that the said vessel belongs to the party of which he is, shall be considered as establishing the fact, and shall relieve both parties from the trouble of further examination.

ARTICLE XV.

And to prevent entirely all disorder and violence in such cases, it is stipulated, that when the vessels of the neutral party, sailing without convoy, shall be met by any vessel of war, publick or private, of the other party, such vessel of war shall not approach within cannon shot of the said neutral vessel, nor send more than two or three men in their boat on board the same to examine her sea letters or passports. And all persons belonging to any vessel of war, publick or private, who shall molest or injure, in any manner whatever, the people, vessels, or effects of the other party, shall be responsible in their persons and property for damages and interest, sufficient security for which shall be given by all commanders of private armed vessels before they are commissioned.

ARTICLE XVI.

It is agreed, that the subjects or citizens of each of the contracting parties, their vessels, and effects, shall not be liable to any embargo or detention on the part of the other, for any military expedition, or other publick or private purpose whatsoever. And in all cases of seizure, detention, or arrest, for debts contracted, or offences committed by any citizen or subject of the one party, within the jurisdiction of the other, the same shall be made and prosecuted by order and authority of law only, and according to the regular course of proceedings usual in such cases.

ARTICLE XVII.

If any vessel or effects of the neutral power be taken by an enemy of the other, or by a pirate, and retaken by that other, they shall be brought into some port of one of the parties, and delivered into the custody of the officers of that port, in order to be restored entire to the true proprietor, as soon as due proof shall be made concerning the property thereof.

ARTICLE XVIII.

If the citizens or subjects of either party in danger from tempests, pirates, enemies, or other accident, shall take refuge with their vessels or effects, within the harbours or jurisdiction of the other, they shall be received, protected, and treated with humanity and kindness, and shall be permitted to furnish themselves,

at reasonable prices, with all refreshments, provisions, and other things necessary for their sustenance, health, and accommodation, and for the repair of their vessels.

ARTICLE XIX.

The vessels of war, publick and private, of both parties, shall carry freely, wheresoever they please, the vessels and effects taken from their enemies, without being obliged to pay any duties, charges, or fees, to officers of admiralty, of the customs, or any others; nor shall such prizes be arrested, searched, or put under legal process, when they come to and enter the ports of the other party, but may freely be carried out again at any time by their captors, to the places expressed in their commissions, which the commanding officer of such vessel shall be obliged to show. But no vessel which shall have made prizes on the subjects of his most christian majesty the king of France, shall have a right of asylum in the ports or havens of the said United States; and if any such be forced therein by tempests, or dangers of the sea, they shall be obliged to depart as soon as possible, according to the tenor of the treaties existing between his said most christian majesty and the said United States.

ARTICLE XX.

No citizen or subject of either of the contracting parties shall take from any power with which the other may be at war, any commission or letter of marque for arming any vessel to act as a privateer against the

other, on pain of being punished as a pirate; nor shall either party hire, lend, or give any part of their naval or military force, to the enemy of the other, to aid them offensively or defensively against that other.

ARTICLE XXI.

If the two contracting parties should be engaged in war against a common enemy, the following points shall be observed between them:

1. If a vessel of one of the parties, retaken by a privateer of the other, shall not have been in possession of the enemy more than twenty-four hours, she shall be restored to the first owner for one third of the value of the vessel and cargo; but if she shall have been more than twenty-four hours in possession of the enemy, she shall belong wholly to the recaptor. 2. If in the same case the recapture were by a publick vessel of war of the one party, restitution shall be made to the owner for one thirtieth part of the value of the vessel and cargo, if she shall not have been in possession of the enemy more than twenty-four hours, and one tenth of the said value where she shall have been longer, which sums shall be distributed in gratuities to the recaptors. 3. The restitution in the cases aforesaid, shall be after due proof of property, and surety given for the part to which the recaptors are entitled. 4. The vessels of war, publick and private, of the two parties, shall be reciprocally admitted with their prizes into the respective ports of each; but the said prizes shall not be discharged nor sold there,

until their legality shall have been decided, according to the laws and regulations of the state to which the captor belongs, but by the judicatures of the place into which the prize shall have been conducted. 5. It shall be free to each party to make such regulations as they shall judge necessary for the conduct of their respective vessels of war, publick and private, relative to the vessels which they shall take and carry into the ports of the two parties.

ARTICLE XXII.

Where the parties shall have a common enemy, or shall both be neutral, the vessels of war of each shall, upon all occasions, take under their protection the vessels of the other going the same course, and shall defend such vessels as long as they hold the same course, against all force and violence, in the same manner as they ought to protect and defend vessels belonging to the party of which they are.

ARTICLE XXIII.

If war should arise between the two contracting parties, the merchants of either country, then residing in the other, shall be allowed to remain nine months to collect their debts and settle their affairs, and may depart freely, carrying off all their effects, without molestation or hindrance: and all women and children, scholars of every faculty, cultivators of the earth, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in

general all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons, nor shall their houses or goods be burnt, or otherwise destroyed, nor their fields wasted by the armed force of the enemy, into whose power, by the events of war, they may happen to fall; but if any thing is necessary to be taken from them for the use of such armed force, the same shall be paid for at a reasonable price. And all merchant and trading vessels employed in exchanging the products of different places, and thereby rendering the necessaries, conveniences, and comforts of human life more easy to be obtained, and more general, shall be allowed to pass free and unmolested; and neither of the contracting powers shall grant or issue any commission to any private armed vessels, empowering them to take or destroy such trading vessels or interrupt such commerce.

ARTICLE XXIV.

And to prevent the destruction of prisoners of war, by sending them into distant and inclement countries, or by crowding them into close and noxious places, the two contracting parties solemnly pledge themselves to each other, and to the world, that they will not adopt any such practice; that neither will send the prisoners whom they may take from the other into the East Indies, or any other parts of Asia or Africa, but that they shall be placed in some part of their dominions in Europe or America, in wholesome situa-

tions; that they shall not be confined in dungeons, prison ships, nor prisons, nor be put into irons, nor bound, nor otherwise restrained in the use of their limbs; that the officers shall be enlarged on their paroles within convenient districts, and have comfortable quarters, and the common men be disposed in cantonments open and extensive enough for air and exercise, and lodged in barracks as roomy and good as are provided by the party in whose power they are, for their own troops; that the officers shall also be daily furnished by the party in whose power they are, with as many rations, and of the same articles and quality, as are allowed by them, either in kind or by commutation, to officers of equal rank in their own army; and all others shall be daily furnished by them with such ration as they allow to a common soldier in their own service; the value whereof shall be paid by the other party on a mutual adjustment of accounts for the subsistence of prisoners at the close of the war; and the said accounts shall not be mingled with, or set off against any others, nor the balances due on them be withheld as a satisfaction or reprisal for any other article, or for any other cause, real or pretended, whatever; that each party shall be allowed to keep a commissary of prisoners, of their own appointment, with every separate cantonment of prisoners in possession of the other, which commissary shall see the prisoners as often as he pleases, shall be allowed to receive and distribute whatever comforts may be sent to them by their friends, and shall be free to make his reports in open letters to those who employ him; but if any officer shall break his parole, or any other

prisoner shall escape from the limits of his cantonment, after they shall have been designated to him, such individual officer, or other prisoner, shall forfeit so much of the benefit of this article as provides for his enlargement on parole or cantonment. And it is declared, that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending this and the next preceding article; but, on the contrary, that the state of war is precisely that for which they are provided; and during which they are to be as sacredly observed as the most acknowledged articles in the law of nature or nations.

ARTICLE XXV.

The two contracting parties grant to each other the liberty of having each in the ports of the other, consuls, vice consuls, agents, and commissaries of their own appointment, whose functions shall be regulated by particular agreement whenever either party shall choose to make such appointment; but if any such consuls shall exercise commerce, they shall be submitted to the same laws and usages to which the private individuals of their nation are submitted in the same place.

ARTICLE XXVI.

If either party shall hereafter grant to any other nation, any particular favour in navigation or commerce, it shall immediately become common to the

other party, freely, where it is freely granted to such other nation, or on yielding the compensation where such nation does the same.

ARTICLE XXVII.

His majesty the king of Prussia, and the United States of America, agree, that this treaty shall be in force during the term of ten years from the exchange of ratifications; and if the expiration of that term should happen during the course of a war between them, then the articles before provided for the regulation of their conduct during such a war, shall continue in force until the conclusion of the treaty which shall re-establish peace; and that this treaty shall be ratified on both sides, and the ratifications exchanged within one year from the day of its signature.

In testimony whereof, the plenipotentiaries beforementioned have hereto subscribed their names, and affixed their seals, at the places of their respective residence, and at the dates expressed under their several signatures.

B. FRANKLIN, [L. S.]
Passy, July 9, 1785.
TH. JEFFERSON, [L. S.]
Paris, July 28, 1785.
JOHN ADAMS, [L. S.]
London, August 5, 1785.
F. G. DE THULEMEIER, [L. S.]
A la Haye, le 10 Septembre, 1785.

Now know ye, That we the said United States in Congress assembled, having considered and approved, do hereby ratify and confirm the said treaty and every article and clause therein contained.

In testimony whereof, we have caused our seal to be hereunto affixed. Witness the honourable Nathaniel Gorham, our chairman, in the absence of his excellency John Hancock, our President, this seventeenth day of May, in the year of our Lord, one thousand seven hundred and eighty-six, and of our independence and sovereignty, the tenth.

MAY 31, 1786.

The following letter from the secretary for foreign affairs read:

Office for Foreign Affairs, May 29, 1786.

SIR,

In my negotiations with Mr. Gardoqui I experience certain difficulties, which, in my opinion, should be so managed as that even the existence of them should remain a secret for the present. I take the liberty therefore of submitting to the consideration of Congress, whether it might not be advisable to appoint a committee with power to instruct and direct me on every point and subject relative to the proposed treaty with Spain. In case Congress should think proper to appoint such a committee, I really think it would be prudent to keep the appointment of it secret, and to forbear having any conversation on subjects connected

with it, except in Congress, and in meetings on the business of it.

With great respect, I have the honour to be your excellency's most obedient and very humble servant,

(Signed) JOHN JAY.

His Excellency the President of Congress.

The above was referred to a committee of three, viz. Mr. King, Mr. Pettit and Mr. Monroe, who, on the 1st August, reported that the letter be referred to a committee of the whole.

AUGUST 1, 1786.

After debate, an order passed for secretary for foreign affairs to attend Congress on Thursday next, at twelve o'clock, on the subject of his letter of 29th May.

AUGUST 3, 1786.

According to order the secretary for foreign affairs attended; and being called upon to state the difficulties mentioned in his letter of the 29th, and explain himself on the subject of that letter,

The secretary for foreign affairs informed Congress that he had some time since received from Mr. Gardoqui an unofficial and unsigned paper,* and afterwards a letter, dated 25th May, 1786,† which he laid before Congress, and the same being read, he then delivered himself as follows:

* See p. 57. † See p. 59.

SIR,

Every person to whom is committed the management of a negotiation, from which many good or ill consequences will probably result, must find himself placed in a very delicate and responsible situation. In that point of light I consider our present negotiations with Spain, and that my sentiments on the subject may be conveyed to Congress with precision, and authentick evidence of them preserved, I have reduced them to writing as concisely and accurately as I could find leisure to do since I received notice to attend this day.

It appears to me, that a proper commercial treaty with Spain would be of more importance to the United States than any they have formed, or can form, with any other nation. I am led to entertain this opinion from the influence which Spain may and will have both on our politicks and commerce.

France, whom we consider as our ally, and to whom we shall naturally turn our eyes for aid in case of war, &c. is strongly bound to Spain by the family compact; and the advantages she derives from it are so various and so great, that it is questionable whether she could ever remain neutral in case of a rupture between us and his catholick majesty. Besides, we are well apprised of the sentiments of France relative to our western claims; in which I include that of freely navigating the river Mississippi. I take it for granted that, while the compact in question exists, France will invariably think it her interest to prefer the good will of Spain to the good will of America; and although she would very reluc-

tantly give umbrage to either, yet, if driven to take part with one or the other, I think it would not be in our favour. Unless we are friends with Spain, her influence, whether more or less, on the counsels of Versailles, will always be against us.

The intermarriages between Spain and Portugal, which have taken place in this and the late reigns, have given the former a degree of influence at the court of the latter which she never before possessed; and leading men in both those kingdoms seem disposed to bury former jealousies and apprehensions in mutual confidence and good offices. How far this system may be perfected, or how long continue, is uncertain; while it lasts, we must expect good or evil from it, according as we stand well or ill with Spain.

Britain would be rejoiced to find us at variance with Spain on any points. She remembers that we were once her subjects, and loves us not. She perceives that we are her most important rivals in the Spanish trade, and that her nursery of seamen on the banks of Newfoundland will prosper or otherwise, as ours of the like kind shall increase or diminish; and it will increase or diminish in proportion as we may or may not undersell them at foreign markets, among which that of Spain is the most advantageous.

If Spain should be disposed to sink that scale in favour of Britain, there is little reason to doubt but that the latter will offer her powerful inducements to grant and perpetuate valuable preferences to her.

It is hard to say how far these inducements may extend, or how far they might *both* think it their interest to join in every measure tending to impair our

strength, and thereby quiet those fears, with which uneasy borderers and discontented neighbours usually inspire each other.

Recent transactions tell us that the influence of Spain in Barbary is not contemptible. When time shall have cast a thicker veil over the memory of past and long continued hostilities; when the convenience of Spanish money and Spanish favours shall become better known, and more felt at Fez, Algiers, &c. it is more than probable that those powers will be little inclined to disoblige a nation, whose arms have given them much trouble, and from whose gratuities they derive more wealth and advantages than they have ever been able to reap from depredations and from plunder often hardly gained.

The influence which the catholick king will and must have, in greater or lesser degrees in Italy, with several of whose sovereigns he is allied by blood, as well as by treaties, merits some consideration. The trade of the Mediterranean deserves our notice; and Spain has convenient ports in that sea.

In various ways, therefore, may Spain promote or oppose our political interests with several other countries; and we shall, I think, either find her in America a very convenient neighbour, or a very troublesome one.

They who are acquainted with the commerce of that country, can be at no loss in perceiving or estimating its value.

It is well known that they consume more than they export, and consequently that the balance of trade is and must be against them. Hence it is that the mil-

lions they yearly bring from the mines of America, so soon disappear, flying out of Spain by every road and port in it.

Details would be tedious, and considering where I am, unnecessary. It is sufficient to observe, that there is scarcely a single production of this country but what may be advantageously exchanged in the Spanish European ports for gold and silver. These advantages, however, must depend on a treaty; for Spain, like other nations, may admit foreigners to trade with her or not, and on such terms only as she may think proper.

The conclusion I draw from what has been said is, that on general principles of policy and commerce, it is the interest of the United States to be on the best terms with Spain. This conclusion would be greatly strengthened by a review of our present local and other circumstances; but they are well known, and their language is strong and intelligible.

Sir, I do really believe that Spain is at present sincerely disposed to make friends of us. I believe this not because they have repeatedly *told* us so; for in my opinion little reliance is to be made on the professions of courts or courtiers; they will say what they may think convenient, but they will act according to what they may think their interest.

It appears to me that the independence, situation, temper, resources and other circumstances of the United States, lead the court of Spain to regard them with much attention, and I may add with jealousy and apprehension.

Their conduct induces me to think that their present policy and design is, to cultivate our friendship, and ensure the continuance of it, by such advantages in a treaty as may prevent its becoming our interest to break with them.

To this cause I ascribe the civilities shown to the United States, by the release of their citizens at the Havana, and by the interposition of his catholick majesty in their favour at Morocco, &c.

To the same cause I ascribe the very liberal and beneficial articles which their plenipotentiary here is willing to have inserted in the treaty I am now negotiating with him, and which are specified in the following notes of them, viz.

1. That all commercial regulations affecting each other shall be founded in perfect reciprocity. Spanish merchants shall enjoy all the commercial privileges of native merchants in the United States, and American merchants shall enjoy all the commercial privileges of native merchants in the kingdom of Spain and in the Canaries and other islands belonging and adjacent thereto. The same privileges shall extend to their respective vessels, and merchandise consisting of the manufactures and productions of their respective countries.

2. Each party may establish consuls in the countries of the other (excepting such provinces in Spain, into which none have heretofore been admitted, viz. Bilboa and Guipusea) with such powers and privileges as shall be ascertained by a particular convention.

3. That the bona fide manufactures and productions of the United States (tobacco only excepted, which shall continue under its present regulations) may be

imported in American or Spanish vessels, into any parts of his majesty's European dominions and islands aforesaid, in like manner as if they were the productions of Spain. And on the other hand, that the bona fide manufactures and productions of his majesty's dominions may be imported into the United States, in Spanish or American vessels, in like manner as if they were the manufactures and productions of the said States. And further, that all such duties and imposts as may mutually be thought necessary to lay on them by either party, shall be ascertained and regulated on principles of exact reciprocity, by a tariff to be formed by a convention for that purpose, to be negotiated and made within *one* year after the exchange of the ratification of this treaty; and in the mean time, that no other duties or imposts shall be exacted from each others merchants and ships than such as may be payable by natives in like cases.

4. That inasmuch as the United States, from not having mines of gold and silver, may often want supplies of specie for a circulating medium, his catholick majesty, as a proof of his good will, agrees to order the masts and timber which may from time to time be wanted for his royal navy, to be purchased, and paid for in specie, in the United States; provided the said masts and timber shall be of equal quality, and, when brought to Spain, shall not cost more than the like may there be had from other countries.

5. It is agreed that the articles commonly inserted in other treaties of commerce for mutual and reciprocal convenience, shall be inserted in this, and that this treaty and every article and stipulation therein

shall continue in full force for years to be computed from the day of the date thereof.

These articles need no comment. It is easy to perceive that by them we gain much, and sacrifice or give up nothing. They will not indeed permit our tobacco to be vended in their country; but that prohibition now exists, and will probably continue, whether we do or do not make a treaty with Spain.

It is also certain that by means of the Canaries, our flour and other commodities will find the way to Spanish America; and the supply of that market, even by a circuitous route, cannot fail of affording a very lucrative vent for those articles.

Mr. Gardoqui is not personally averse to our visiting the Philippines, but his instructions do not reach that point. I have hopes that this may be carried; and in that case it is obvious we shall be the better for the Acapulco trade.

I forbear to dwell minutely on these commercial subjects, because nothing I could say respecting them would be new.

My attention is chiefly fixed on two obstacles, which at present divide us, viz. the navigation of the Mississippi, and the territorial limits between them and us.

My letters written from Spain, when our affairs were the least promising, evince my opinion respecting the Mississippi, and oppose every idea of our relinquishing our right to navigate it. I entertain the same sentiments of that right, and of the importance of retaining it, which I then did.

Mr. Gardoqui strongly insists on our relinquishing it. We have had many conferences and much reason-

ing on the subject, not necessary now to detail. His concluding answer to all my arguments has steadily been, that the king will never yield that point, nor consent to any compromise about it; for that it always has been, and continues to be, one of their maxims of policy, to exclude all mankind from their American shores.

I have often reminded him that the adjacent country was filling fast with people; and that the time must and would come, when they would not submit to seeing a fine river flow before their doors without using it as a high way to the sea for the transportation of their productions; that it would therefore be wise to look forward to that event, and take care not to sow in the treaty any seeds of future discord. He said that the time alluded to was far distant; and that treaties were not to provide for contingencies so remote and future. For his part he considered the rapid settlement of that country as injurious to the states, and that they would find it necessary to check it. Many fruitless arguments passed between us; and though he would admit that the only way to make treaties and friendship permanent, was for neither party to leave the other any thing to complain of; yet he would still insist, that the Mississippi must be shut against us. The truth is, that courts never admit the force of any reasoning or arguments but such as apply in their favour; and it is equally true, that even if our right to that navigation, or to any thing else, was expressly declared in holy writ, we should be able to provide for the enjoyment of it no otherwise than by being in capacity to repel force by force.

Circumstanced as we are, I think it would be expedient to agree that the treaty should be limited to twenty-five or thirty years, and that one of the articles should stipulate that the United States would forbear to use the navigation of that river below their territories to the ocean. Thus the duration of the treaty and of the forbearance in question would be limited to the same period.

Whether Mr. Gardoqui would be content with such an article, I cannot determine, my instructions restraining me from even sounding him respecting it. I nevertheless think the experiment worth trying for several reasons:

1. Because unless that matter can in some way or other be settled, the treaty, however advantageous, will not be concluded.

2. As that navigation is not *at present* important, nor will probably become much so in less than twenty-five or thirty years, a forbearance to use it while we do not *want it*, is no great sacrifice.

3. Spain now excludes us from that navigation, and with a strong hand holds it against us. She will not yield it peaceably, and therefore we can only acquire it by *war*. Now as we are not prepared for a war with any power; as many of the states would be little inclined to a war with Spain for that object at this day; and as such a war would for those and a variety of obvious reasons be inexpedient, it follows, that Spain will, for a long space of time yet to come, exclude us from that navigation. Why therefore should we not (for a valuable consideration too) consent to forbear to use what we know is not in our power to use.

4. If Spain and the United States should part on this point, what are the latter to do? Will it after that be consistent with their dignity to permit Spain forcibly to exclude them from a right, which, at the expense of a beneficial treaty, they have asserted? They will find themselves obliged either to do this, and be humiliated, or they must attack Spain. Are they ripe and prepared for this? I wish I could say they are.

It is possible that such an article, if agreed to, might lessen one of the arguments urged to enhance the value of western lands; but would not the Spaniards continuing by force to exclude us from the navigation soon have the same effect? In either case that argument must lose some of its force; but in the one case America would also lose some of its dignity. It can be no question therefore which of the two cases would be least desirable.

If such a compromise should be attempted, and not succeed, we shall lose nothing by it; for they who take a lease admit the right of the lessor.

I have some hope that it would succeed, for I suspect Spain would agree, that as we are tempted to this forbearance now by other articles in the treaty, the like temptations will again induce us to prolong it; besides, I much doubt whether the minister extends his views far beyond the limits of his own life or administration; if he can render that easy and satisfactory, he may perhaps, without much reluctance, leave future disputes to be settled by future ministers. It is hard to say whether this will or will not be the case. I am for trying the experiment, because it can, in my opinion, do us no injury, and may produce much good.

With respect to territorial limits, it is clear to me that Spain can justly claim nothing east of the Mississippi but what may be comprehended within the bounds of the Floridas. How far those bounds extend, or ought to extend, may prove a question of more difficulty to negotiate than to decide. Pains I think should be taken to conciliate and settle all such matters amicably; and it would be better even to yield a few acres, than to part in ill humour.

If their demands, when ascertained, should prove too extravagant, and too pertinaciously adhered to, one mode of avoiding a rupture will still be left, viz. referring that dispute to impartial commissioners. I do not mean by this, that any third sovereign should be called in to mediate or arbitrate about the matter. They make troublesome arbitrators, and not always the most impartial. I mean private men for commissioners; and to me there appears little difficulty in finding proper ones; for not being prepared for war, I think it much our interest to avoid placing ourselves in such a situation, as that our forbearing hostilities may expose us to indignities.

It is much to be wished that all these matters had lain dormant for years yet to come; but such wishes are vain; these disputes are agitating; they press themselves upon us, and must terminate in accommodation, or war, or disgrace. The last is the worst that can happen; the second we are unprepared for; and therefore our attention and endeavours should be bent to the first.

Permit me, sir, to make one or two observations more. If the system of Spain respecting us really is

what I suppose it to be, then it follows that this is the best season for making a treaty with her that can be expected.

The late war has left her new commercial engagements to make, particularly with Britain, whose attention to commerce leaves us no room to suppose her indifferent to that with Spain. She is now able and willing to grant us favours; other treaties and other dispositions and views may render her in future both unable and unwilling to do the like.

At a time when other nations are showing us no extraordinary marks of respect, the court of Spain is even courting our friendship by strong marks not merely of polite and friendly attention, but by offering us favours not common for her to hold out or bestow; for I consider the terms she proposes as far more advantageous than any to be found in her commercial treaties with other nations.

If after all her endeavours to take us by the hand, we should hold it back, every disposition and passion opposite to kind and friendly ones will undoubtedly influence her future conduct. Disappointed in her views, and mortified by repulse, and that in the sight of Europe, we may easily judge what her feelings would be; nor is it difficult to foresee that those feelings stimulated by the jealousies and apprehensions beforementioned, will naturally precipitate and keep her in a system of politicks, from which the United States cannot expect to derive advantage.

The Mississippi would continue shut; France would tell us our claim to it was ill founded; the Spanish posts on its banks, and even those out of Florida in our country

would be strengthened, and that nation would there bid us defiance, with impunity, at least until the American nation shall become more really and truly a nation than it at present is. For, unblessed with an efficient government, destitute of funds, and without publick credit, either at home or abroad, we should be obliged to wait in patience for better days, or plunge into an unpopular and dangerous war with very little prospect of terminating it by a peace, either advantageous or glorious.

Supposing the Spanish business out of question, yet the situation of the United States appears to me to be seriously delicate, and to call for great circumspection both at home and abroad; nor, in my opinion, will this cease to be the case, until a vigorous national government be formed, and publick credit and confidence established.

These, sir, are my sentiments on these important subjects; and whether they accord with, or vary from, those which may here prevail, yet I shall always remember that I am to be governed by the instructions, and that it is my duty faithfully to execute the orders of Congress.

The following is an unofficial and unsigned paper received by the Secretary for Foreign Affairs from Mr. Gardoqui.

Spain being by far the greatest consumer of all the European kingdoms, and having besides extensive territories of consume in her West Indies, it is of course

of the greatest importance to any foreign nation in all commercial interests.

England is very conscious of the advantages that may be got by a friendly commercial treaty, and leaves no pains to bring it to a happy conclusion as soon as possible. She well knows, that Spain's annual consume of codfish brings her in from four to five millions of dollars, by which she employs between five or six thousand seamen.

That great quantities of pickled salmon and train oil are besides pouring annually into the Spanish markets from her ports.

To this must be added, her great woollen manufactures; but as Spain is advancing fast in the latter, and will probably stop the importation of them, England wants to secure the fisheries, which sees no prospect of Spain's having any at all.

Under the above principles, England exerts to the utmost to prevent that the American states should come to a friendly good understanding with Spain, fully assured that no other nation can outrival them in the valuable branches of fisheries.

She well knows that the local situation of the United States, and other advantages, render a much better fish than that of Newfoundland, and that the Spanish markets afford one to one and a half dollars per quintal more to the former. She is besides fully persuaded, that the trade of the states with Spain must rise them amazingly, as their flour, grain, rice, tobacco and several other smaller articles, such as lumber, masts, yards, bees-wax, &c. are valuable. If it be added to this, the consideration that Spain and the states are the almost

only masters of this vast continent, who if well joined may defy the other powers, or at least keep them in eternal peace, there can be no doubt of its being a mutual interest.

Letter from the same to the same, dated New York, May 25, 1786.

SIR,

The period is arrived that we have wished for many months, when there would be a full meeting of Congress, that you might refer to them the difficulty which you have manifested to me respecting the claim to navigate the river Mississippi, which is ill founded. I request the favour of you to do it as soon as possible; and that you will be persuaded of what I have always assured you, that the king will not permit any nation to navigate between the two banks belonging to his majesty from the extent of his conquests made by his royal arms over the English in East and West Florida, according to the dominion formerly held by the English, and the jurisdiction exercised by the commandant of Pensacola, on which it depended, as well as the countries to the east of the Mississippi, of which formal possession was taken by captain don Baltazar de Villers, commandant of the post of Arkansaw, for his majesty, on the 22d November, 1780.

His majesty does not consider the regulation made between the United States and Great Britain respecting the territories conquered by his arms, but as a conditional agreement, in which they tacitly leave safe the territorial rights which he possessed in those parts.

Those territories were in that same state of conquest, and in the possession neither of England nor the United States, when they disposed of them. There can be no doubt but that treaty of 30th November, 1782, when the war between Spain and England continued, could not fix the limits of countries which were not in possession. His majesty therefore understands those stipulations as conditional, and dependent on the situation in which things might be left by a general peace.

The honourable Congress cannot be ignorant of the good and generous disposition of his majesty towards the United States, and the importance of his powerful friendship. His majesty having been pleased to give so many strong proofs of favour to the Americans captive in Barbary, and those he afterwards afforded for aiding their commissioners for negotiating and obtaining peace with those powers.

They should also be persuaded, that the king enjoys so great consideration with those powers, that as being a nation which possesses the friendship of his majesty, they may be sure of that of the emperor of Morocco, and in a great degree of that contracted with the regency of Algiers. America has reason to fear the evil consequences which all their commerce would experience if his royal mediation should be withdrawn; for she would not only be deprived of that in the Mediterranean, but would also be much interrupted in that which she carries on through the Western Islands and Canaries, and even on their own coasts.

It appears to me equally just to remind the honourable Congress of the generosity with which his majesty

has delayed requesting till now the payment of the principal of the debts contracted by the United States both in Spain and America, being so delicate as not to apply even for the interest due thereon, notwithstanding the difficulties with which he provides for his treasury.

These facts appear sufficient to remove the difficulties you have manifested to me respecting limits and the navigation of the said river; but I contemplate in its greatest latitude the risk which the United States would run, by not yielding without delay to the just rights of the king, of losing *the only trade* whose balance is in their favour, exposing themselves to the danger of enjoying it but illy, and of frustrating other compacts reciprocally useful, which time and experience may bring about.

The importance of this object is evident in all the states, for it is well known that all their productions meet with a ready sale in the markets of Spain, where they are paid for in gold and silver; whereas all other nations pay with manufactures, (in great part articles of luxury) with which they impoverish this country.

Spain in its present state is a consumer both in Europe and America. There is not a nation but what earnestly desires the friendship and favour of the king; and as he has no occasion for the codfish, oil, salmon, grain, flour, rice or other productions, he may, considering the right which obliges his subjects to provide themselves by their own industry, or other useful and important means, find it convenient to prohibit them, to remind this nation at present, as a friend, that they have no treaty; whereas in case they generously com-

ply, the king will consider them, in commerce, as being the most favoured nation, making reciprocal regulations, so that whenever one is made here favourable to Spain in regard to imports and exports, another equivalent to that of the United States shall there be made.

No one is ignorant of the great advantages which the United States derive from their trade with Spain, from whence they yearly extract millions, as well by their productions, as by their navigation, which so much promotes the growth and maintenance of their marine.

Spain has no occasion for foreign commodities to become very brilliant in its proper dominions, and to find an advantageous consumption for its products and manufactures; so that the generosity and friendship which she manifests, proceed solely from the benevolent attentions which with a liberal hand the king wishes to distinguish the United States.

In consideration that nothing be said of such difficulties, I believe that his majesty will consent to guaranty to the United States their rights and dominions as they shall be left by our treaty. I will do my best endeavours on this and other points, and will interpose my prayers that his majesty may adopt the most favourable measures in order that the satisfaction of the debts due from the United States to Spain may be made with such relaxations as may be convenient to them.

The honourable Congress will well perceive the importance of the guaranty and friendship of one of the first sovereigns in Europe, which will give consistency to their confederacy, and whose magnanimity desires

only to proceed by equity, justice and sincere desires of a constant friendship and good neighbourhood.

I ought not, therefore, to doubt but that such an illustrious confederacy will entertain correspondent dispositions; and I hope that you will not delay to promote it, and to advise me as soon as possible, that so salutary a work may not be deferred, to which for my part, I shall contribute with the greatest good will for the benefit of both nations.

I have the honour to be, &c. &.

(Signed) DIEGO DE GARDOQUI.

Sen. Don John Jay, Minister for the Foreign Affairs for the U. S.

AUGUST 10, 1786.

On motion of Mr. Grayson, seconded by Mr. Bloodworth, the secretary of Congress transmitted to Mr. Jay the following order:

That the secretary for foreign affairs without delay state to Congress any information he may have received respecting the sentiments of the court of France, touching our right of navigating the Mississippi. Also that he state to Congress the territorial claims of Spain on the east side of the Mississippi.

In consequence of which the secretary for foreign affairs made the following report.

Office of Foreign Affairs, August 17, 1786.

The secretary of the United States for the department of foreign affairs, in obedience to the order of Congress directing him to state to them without delay

the territorial claims of Spain on the east side of the Mississippi, and the sentiments of France touching our right to navigate that river, reports,

That the time allotted for this report must necessarily render it concise and summary.

It is well known that Spain claims the two Floridas, and contends that West Florida extends higher up the river Mississippi than is admitted by our treaty with Britain, but how much higher *exactly* your secretary is uninformed, and has reason to think that Spain has not yet made up her own mind on that point.

Spain also claims certain posts and places on the Mississippi, of which she divested the English during the war, but how far they mean to stretch their claims over the adjacent country, the negotiations between Mr. Gardoqui and your secretary have not as yet extended so minutely to that point as to enable him to determine.

On the 26th day of April, 1782, your secretary, who was then at Madrid, wrote a letter to the secretary for foreign affairs, of which the following is an extract:

"The Madrid Gazette of the 12th March contained a paragraph of which you ought not to be ignorant; I shall therefore copy it verbatim, and add a translation as literal as I can make it.

'Translation.

'By a letter from the commandant general of the army of operations at the Havana and governour of Louisiana, his majesty has advices, that a detachment of sixty-five militia men, and sixty Indians of the nations Otaguos, Sotu and Putuatami, under the command

of don Eugenio Pierre, a captain of militia, accompanied by don Carlos Tayon, a sub-lieutenant of militia, by don Luis Chevalier, a man well versed in the language of the Indians, and by their great chiefs Eleturno and Naquigen, which marched the 2d January, 1781, from the town of St. Luis of the Illinois, had possessed themselves of the post of St. Joseph, which the English occupied at two hundred and twenty leagues distance from that of the abovementioned St. Luis; having suffered in so extensive a march, and so rigorous a season, the greatest inconveniences from cold and hunger, exposed to continued risks from the country being possessed by savage nations, and having to pass over parts covered with snow, and each one being obliged to carry provision for his own subsistence, and various merchandises which were necessary to content, in case of need, the barbarous nations through whom they were obliged to cross. The commander, by seasonable negotiations and precautions, prevented a considerable body of Indians, who were at the devotion of the English, from opposing this expedition; for it would otherwise have been difficult to have accomplished the taking of the said post. They made prisoners of the few English they found in it, the others having perhaps retired in consequence of some prior notice. Don Eugenio Pierre took possession, in the name of the king, of that place and its dependencies, and of the river of the Illinois; in consequence whereof the standard of his majesty was there displayed during the whole time. He took the English one, and delivered it on his arrival at St. Luis to don Francisco Cruzat the commandant of that post.

'The destruction of the magazine of provisions and goods which the English had there (the greater part of which was divided among our Indians and those who lived at St. Joseph, as had been offered them in case they did not oppose our troops) was not the only advantage resulting from the success of this expedition, for thereby it became impossible for the English to execute their plan of attacking the fort of St. Luis of the Illinois, and it also served to intimidate these savage nations, and oblige them to promise to remain neuter, which they do at present.'

"When you consider the ostensible object of this expedition, the distance of it, the formalities with which the place, the country and the river were taken possession of in the name of his catholick majesty, I am persuaded it will not be necessary for me to swell this letter with remarks that would occur to a reader of far less penetration than yourself."

This is the only circumstance or transaction which your secretary recollects to have heard while in Spain, which induced him to suppose that his catholick majesty wished to acquire any lands east of the Mississippi, except the Floridas. Neither count de Florida Blanca, nor Mr. Gardoqui, who was then employed, nor Mr. Del Campo, ever hinted to your secretary that a cession of any territory was expected or desired of the United States; all that was then insisted upon was our quitting all claim to the navigation of the Mississippi below our territories.

When your secretary came to Paris, in the year 1782, count Aranda, the Spanish ambassador there, appeared to have far other ideas on the subject.

Your secretary's conferences with him being detailed in his letter of the 17th November, 1782, it does not appear necessary to repeat them here, nor to extract more from that letter than merely to observe, that the count did mark a line on a map as, and for, a proper line of boundary between Spain and the United States in that western country. That same map is now in the possession of the secretary of Congress.

Although your secretary has not yet obtained from Mr. Gardoqui an exact and explicit specification of the Spanish claims, yet he has good reason to believe that they fall very far short of those suggested by count Aranda.

Your secretary thinks he should not omit inserting in this report the following extracts from a correspondence on these subjects between the marquis de la Fayette and count de Florida Blanca, viz.

From the Marquis de la Fayette to the Count de Florida Blanca, dated Madrid, February 19, 1783.

"SIR,

"Having had the honour to confer with your excellency on the objects relative to the United States, and being soon to repair to the American Congress, I wish to be fully impressed with the result of our conversations. Instead of the indifference, and even of the divisions which another nation would be glad to foresee, I am happy to have it in my power to inform the United States of your good dispositions. It is to you, sir, I am indebted for this advantage; and in order to make it complete, and to make myself

certain that I forget nothing, give me leave to submit to your excellency the report which I intend to lay before Congress.

" His catholick majesty desires that a lasting confidence and harmony may subsist between him and the United States; and he is determined on his part to do every thing that will be necessary to keep it up. The American charge des affaires is at this moment received as such, and your excellency is going to treat of the interests of the two nations. As you wish to show Mr. Jay every kind of regard, you wait only till the count de Aranda shall have notified your dispositions to him, to present Mr. Carmichael to his majesty.

" With respect to the limits, his catholick majesty has adopted those that are determined by the preliminaries of the 30th of November, between the United States and the court of London. The fear of raising an object of dissention, is the only objection the king has to the free navigation of the river Mississippi. The Virginia tobacco, the naval stores, may furnish matter for reciprocal conventions in the treaty, and by means of the productions of America, arrangements might be made useful to her finances. When I had the honour to speak to you in favour of a diminution of the duties on codfish, you have answered that it would be necessary to give to France a similar advantage; and that by virtue of former treaties, the English might set up pretensions to the same. But you will do in every respect all that will be in your power to satisfy America.

"I would with very great pleasure enter into every detail in which I foresee a connexion between Spain and the United States, but I am not to be concerned in this happy work. The ministers of the United States, and one whom you are going to send thither, are to make it their business; and I content myself with reminding you of the general ideas you have given me. A word from you will satisfy me that I have not forgot any thing. The dispositions of his catholick majesty, and the candour of your excellency, will leave no pretence for misrepresentations. The alliance of the house of Bourbon with the United States is founded on reciprocal interest; it will still acquire greater strength from the confidence which your excellency wishes to establish.

"Such, sir, are the conclusions which I have drawn from our conferences, and the account which I intend to give to Congress, without having any mission for that purpose. I am acquainted with the sentiments of Congress; and I am convinced they will set a just value upon your dispositions. In permitting me to acquaint them with what I have seen, you lay a claim to my personal gratitude; I join the assurance of it to that of the respect with which I have the honour to be, &c."

From the Count de Florida Blanca to the Marquis de la Fayette, dated 22d February, 1783.

"SIR,

"I cannot comply better with your desire than by asking your leave to give you here my answer. You

have perfectly well understood whatever I have had the honour to communicate to you with respect to our dispositions towards the United States. I shall only add, that although it is his majesty's intentions to abide for the present by the limits established by the treaty of the 30th of November, 1782, between the English and the Americans, the king intends to inform himself particularly whether it can be in any ways inconvenient or prejudicial to settle that affair amicably with the United States.

" I have the honour to be, &c."

" On receiving the answer of the count de Florida Blanca, I desired an explanation respecting the addition that relates to the limits. I was answered, that it was a fixed principle to abide by the limits established by the treaty between the English and Americans; that his remark related only to mere unimportant details, which he wished to receive from the Spanish commandants, which would be amicably regulated, and would by no means oppose the general principle. I asked him before the ambassador of France, whether he would give me his word of honour for it; he answered me he *would*, and that I might engage it to the United States.

" Madrid, 22d February, 1783.

(Signed) LA FAYETTE."

Your secretary showed these extracts to Mr. Gardoqui. He wrote to his minister about them; and has since told your secretary that the marquis misunderstood the count. From these and similar facts and

circumstances, your secretary is led to believe, that, all other matters being first settled, Spain may be prevailed upon to confine these improper claims within a small compass; for as she has not yet delineated them by metes and bounds, she may diminish them without hurting her pride.

As to the sentiments of France, touching our right to navigate the Mississippi, your secretary began at an early period to believe, and still thinks, that the court of France will not admit it.

He well recollects that Mr. Gerard, while at Philadelphia, treated it as being ill founded, and promoted measures for a dereliction of it.

He finds among the communications made by the chevalier de la Luzerne, one reported by a committee of Congress, in January, 1780, which in his opinion merits consideration, viz.

"The committee appointed to receive the communications from the minister plenipotentiary of France, report, that, on their second conference with him, he communicated to them—

'That his most christian majesty being uninformed of the appointment of a minister plenipotentiary to treat of an alliance between the United States and his catholick majesty, signified to his minister plenipotentiary to these United States, that he wishes most ardently for such an alliance; and in order to make the way thereto more easy, commanded him to communicate to Congress certain articles which his catholick majesty deems of great importance to the interests of his crown, and on which it is highly necessary that these United States explain themselves with precision,

and with such moderation as may consist with their essential rights.

'That the articles are,

'1. A precise and invariable western boundary to the United States.

'2. The exclusive navigation of the river Mississippi.

'3. The possession of the Floridas.

'4. The lands on the left or eastern side of the river Mississippi.

'That on the first article, it is the idea of the cabinet of Madrid, that the United States extend to the westward no farther than settlements were permitted by the royal proclamation bearing date the day of 1763.

'On the second, that the United States do not consider themselves as having any right to navigate the river Mississippi, no territory belonging to them being situated thereon.

'On the third, that it is probable the king of Spain will conquer the Floridas during the course of the present war; and in such event every cause of dispute relative thereto between Spain and these United States ought to be removed.

'On the fourth, that the lands lying on the east side of the Mississippi, whereon the settlements were prohibited by the aforesaid proclamation, are possessions of the crown of Great Britain, and proper objects against which the arms of Spain may be employed for the purpose of making a permanent conquest for the Spanish crown. That such conquest may probably be made during the present war. That therefore

it would be advisable to restrain the southern states from making any settlements or conquests in those territories.

'That the council of Madrid consider the United States as having no claims to those territories, either as not having had possession of them before the present war, or not having any foundation for a claim in the right of the sovereign of Great Britain, whose dominion they have abjured.

'That his most christian majesty, united to the catholick king by blood and by the strictest alliances, and united with these states in treaties of alliance, and feeling towards them dispositions of the most perfect friendship, is exceedingly desirous of conciliating between his catholick majesty and these United States the most happy and lasting friendship. That the United States may repose the utmost confidence in his good will to their interests, and in the justice and liberality of his catholick majesty; and that he cannot deem the revolution which has set up the independence of these United States as past all danger of unfavourable events, until his catholick majesty and the said states shall be established on those terms of confidence and amity, which are the objects of his most christian majesty's very earnest wishes.'"

That in 1782, at Paris, your secretary received and transmitted to Congress a memoir of monsieur de Rayneval, the first secretary of count de Vergennes, on the subject of our western claims. That paper was not official. The following is a translation of it:

"IDEA

"On the manner of determining and fixing the limits between Spain and the United States on the Ohio and the Mississippi.

"The question between Spain and the United States of North America is, How to regulate the respective limits towards the Ohio and the Mississippi. The Americans pretend that their dominion extends as far as the Mississippi; and Spain maintains the contrary.

"It is evident that the Americans can only borrow from England the right they pretend to have to extend as far as the Mississippi: therefore, to determine this right, it is proper to examine what the court of London has thought and done on this head.

"It is known that before the treaty of Paris, France possessed Louisiana and Canada; and that she considered the savage people situated to the east of the Mississippi either as independent, or as under her protection.

"This pretension caused no dispute. England never thought of making any, except as to the lands situated towards the south of the Ohio, in that part where she had given the name of Allegany to that river.

"A discussion about limits at that time took place between the court of Versailles and London; but it would be superfluous to follow the particulars. It will suffice to observe, that England proposed, in 1755, the following boundary: It set out from the point where the river des Boeufs falls into the Ohio, at

the place called Venango; it went up this river towards Lake Erie as far as twenty leagues; and setting off again from the same place, Venango, a right line was drawn as far as the last mountains of Virginia, which descend towards the ocean. As to the savage tribes situated between the aforesaid line and the Mississippi, the English minister considers them as independent; from whence it follows, that according to the very propositions of the court of London, almost the whole course of the Ohio belonged to France; and that the countries situated to the westward of the mountains were considered as having nothing in common with the colonies.

"When peace was negotiated, in 1761, France offered to make a cession of Canada to England. The regulation of the limits of this colony and Louisiana was in question. France pretended that almost the whole course of the Ohio made a part of Louisiana; and the court of London, to prove that this river belonged to Canada, produced several authentick papers, among others the chart which Mr. Vaudreuil delivered to the English commandant when he abandoned Canada. The minister of London maintained, at the same time, that a part of the savages situated to the eastward of the Mississippi were independent; another part under its protection; and that she had purchased a part from the five Iroquois nations. The misfortunes of France cut these discussions short. The treaty of Paris assigned the Mississippi for the boundary between the possessions of France and Great Britain.

"Let us see the dispositions which the court of London has made in consequence of the treaty of Paris.

"If she had considered the vast territories situated to the eastward of the Mississippi as forming part of her ancient colonies, she would have declared so, and have made dispositions accordingly. So far from any such thing, the king of England. in a proclamation of the month of October, 1763, declares in a precise and positive manner, that the lands in question are situated between the Mississippi and the *ancient English establishments*. It is therefore clearly evident that the court of London itself, when it was as yet sovereign of the thirteen colonies, did not consider the aforementioned lands as forming part of these same colonies; and it results from this in the most demonstrative manner, that they have not at this time any right over these lands. To maintain the contrary, every principle of the laws of nature and nations must be subverted.

"The principles now established are as applicable to Spain as to the United States. This power cannot extend its claim beyond the bounds of its conquests; she cannot therefore pass beyond the Natchez, situated towards the thirty-first degree of latitude: her rights are therefore confined to this degree; what is beyond is either independent, or belonging to England; neither Spain nor the Americans can have any pretensions thereto. The future treaty of peace can alone regulate the respective rights.

"The consequence of all that has been said is, that neither Spain nor the United States have the least right of sovereignty over the savages in question; and that

the transactions they may carry on as to this country would be to no purpose.

"But the future may bring forth new circumstances; and this reflection leads me to suppose that it would be of use that the court of Madrid and the United States should make an eventual arrangement.

"This arrangement may be made in the following manner: A right line should be drawn from the eastern angle of the gulf of Mexico, which makes the section between the two Floridas, to fort Toulouze, situated in the country of the Alibamons; from thence the river Loueshatchi should be ascended, from the mouth of which a right line should be drawn to the fort or factory Quenassie; from this last place the course of the river Euphasee is to be followed till it joins the Cherokee; the course of this last river is to be pursued to the place where it receives the Pelisippi; this last to be followed to its source; from whence a right line is to be drawn to Cumberland river, whose course is to be followed until it falls into the Ohio. The savages to the west of the line described should be free, under the protection of Spain; those to the eastward should be free, and under the protection of the United States; or rather the Americans may make such arrangements with them as is most convenient to themselves. The trade should be free to both parties.

"By looking over the chart we will find that Spain would lose almost the whole course of the Ohio; and that the establishments which the Americans may have on this river would remain untouched; and that even a very extensive space remains to form new ones.

"As to the course of navigation of the Mississippi, they follow with the property, and they will belong therefore to the nation to which the two banks belong. If then by the future treaty of peace Spain preserves West Florida, she alone will be proprietor of the course of the Mississippi, from the thirty-first degree of latitude until [to] the mouth of this river. Whatever may be the case with that part which is beyond this point to the north, the United States of America can have no pretentions to it, not being masters of either border of this river.

"As to what respects the lands situated to the northward of the Ohio, there is reason to presume that Spain can form no pretensions thereto. Their fate must be regulated by the court of London."

Your secretary also thinks, that the sentiment of the court of France on the subject in question may be gathered from a conference between him and their ambassador's secretary, who called upon him by the ambassador's direction, at Madrid, on the 11th day of September, 1780; the particulars of which are contained in his letter of 6th November. The following is an extract from it.

"On the 11th September, the French ambassador's secretary called upon me by the ambassador's direction, to inform me that an express was going to Paris, and to know whether any thing further had been done in our affairs since he had seen me. I told him things continued in the same situation. He again commenced a conversation on the subject; and as he came directly from the ambassador, I entered into it. He expressed some concern for the delays I met with. I told him

such things must be expected. He said he hoped I was content with France. I replied that I apprehended France considered an interference in our negotiation as a delicate matter, for that as she had probably held up the exclusive navigation of the Mississippi and gulf of Mexico, among other objects, to induce Spain to take a part in the war, she might hesitate about pressing Spain into a treaty with us on terms that would not comprehend this object. He said, Mr. Gerard had reasoned well about those matters, but that he did not believe France would be backward, nor indeed that she had promised this to Spain, to bring her into the war. I told him I should not be surprised to find that the delay arose from a desire of hearing further news from America, and probably from *Philadelphia*. He said that could not be the case, for since Mr. Miralle's death, Spain had no person there to give them intelligence. I told him that Spain might be waiting the issue of new motions respecting the Mississippi, in Congress; and that I was sure count de la Luzerne would readily be at the trouble of communicating to them any interesting information on *that*, or any other subject. Whether he drew any conclusions from the manner in which this was said, I can't say, but, in a way that looked like exculpating that minister, he told me that count de la Luzerne had only mentioned to the French ambassador, that two members of Congress with whom he had talked over the affair of the Mississippi, thought it would be best not to bring on the question of the navigation until Spain should become possessed of the adjacent country, for that *then* it

might be ceded with a better grace. He mentioned no names."

These facts and papers, in the opinion of your secretary, afford much evidence of the sentiments entertained by the court of France respecting our right to navigate the Mississippi prior to, and at the time of the peace.

Whether they have adopted new opinions in that point, your secretary cannot decide. He has however no reason to believe that has been the case, for he can perceive no reason why such an alteration in their sentiments should have taken place. On the contrary, it seems from Mr. Jefferson's letter of the 23d May last, that the minister is not ready to admit all our claims as ascertained by the treaty of peace to be within their guaranty. He intimated that all our limits were not fixed; and your secretary thinks that the minister could have meant to allude only to our western limits and claims. Britain disputes no boundaries with us, unless perhaps part of our eastern; and those disputes had not yet been brought before the French court; but Spain still adheres to pretensions of which France had been long and well informed, and therefore your secretary supposes the minister then had those in view.

Your secretary sincerely wishes that the event may not confirm his opinion, and that the court of France may clearly admit all our claims, and particularly that to navigate the Mississippi, to be well founded, and to be within the terms, intent and meaning of the guaranty.

AUGUST 23, 1786.

Congress took into consideration the report of a committee of the whole, to whom were referred the letter of the 29th of May, and the speech of the secretary for foreign affairs; which report being as follows:

"August 23, 1786. In committee of the whole, agreed to report to Congress the following resolutions.

"Resolved, That so much of the resolution of Congress of the 25th day of August, 1785, being an instruction to the secretary of the United States for the department of foreign affairs, as are contained in the following words, namely, 'and that the following be substituted in its place, "that the secretary to the United States for the department of foreign affairs be and hereby is instructed, in his plan of a treaty with the encargado de negocios of his catholick majesty, particularly to stipulate the right of the United States to their territorial bounds, and the free navigation of the Mississippi from the source to the ocean, established in their treaties with Great Britain; and that he neither conclude nor sign any treaty, compact or convention with the said encargado de negocios until he hath previously communicated it to Congress and received their approbation,"' be, and the same is hereby repealed and made void.

"Resolved, That the secretary of the United States for the department of foreign affairs be and hereby is instructed, if in the course of his negotiation with the encargado de negocios of his catholick majesty, it

shall be found indispensable for the conclusion of the same, that the United States and their citizens, for a limited time, should forbear to use so much of the river Mississippi as is south of the southern boundary of the United States, that he be and hereby is authorized and directed, on behalf of the United States, to consent to an article or articles stipulating on their part and that of their citizens a forbearance of the use of the said river Mississippi, for a period not exceeding
years, from the point where the southern boundary of the United States intersects the said river, to its mouth or the ocean; provided that such stipulation of a forbearance of the use of the said river for a limited time as aforesaid, shall not be construed to extinguish the right of the United States, independent of such stipulation, to use and navigate the said river from its source to the ocean; provided farther, that the secretary of foreign affairs shall not stipulate on behalf of the United States, in favour of the exclusive navigation and use of the said river Mississippi by his catholick majesty and his subjects, below its intersection of the southern boundary of the United States, unless it shall be agreed and stipulated in the same treaty, that the navigation and use of the said river from the intersection aforesaid to its head or source be and continue common to the United States and his catholick majesty and to their respective citizens and subjects. And the said secretary of foreign affairs is hereby farther instructed, firmly to insist on the territorial boundaries of the United States southwardly and westwardly, as fixed by the definitive treaty of peace and friendship between the United States of America and his Britan-

nick majesty; and on no condition to consent to a treaty, unless the same shall contain a quit claim of all pretended rights and claims of his catholick majesty to territory within the United States, eastwardly of the Mississippi and northerly of the Floridas; whether the said rights or claims are pretended in virtue of conquest or otherwise. And if in the course of the negotiation a question should arise relative to the precise boundary line between the United States and the Floridas, the said secretary of foreign affairs is hereby instructed that the Floridas do not, and ought not of right to extend to the northward of the boundary line between them and the United States as fixed by the definitive treaty aforesaid, and that he shall not in any event by treaty or otherwise consent to the extent of the Floridas northerly of a line or boundary of the United States adjacent to the Floridas, specified in a separate article of the provisional articles between the United States and Great Britain, at Paris, on the 30th day of November, 1782. And provided that a disagreement shall take place between the said secretary of foreign affairs and the encargado de negocios of his catholick majesty, by the latter's insisting on the boundary line as specified by the aforesaid separate article, and the former's insisting on the boundary line as fixed in the aforesaid definitive treaty, the said secretary of foreign affairs is hereby authorized to agree to the settlement and final decision of such disagreement by commissaries mutually appointed for that purpose; for the appointment of whom and for all other purposes incident to the final determination of the said disagreement by commissaries, conformable

to the laws of nations, the said secretary of foreign affairs is hereby invested with full powers on behalf of the United States of America."

A motion was made by Mr. King, seconded by Mr. Smith, to amend the report by striking out the last clause in the second resolution, beginning with the words "and the said secretary of foreign affairs is "hereby further instructed firmly," &c. to the end, and in lieu thereof to insert "provided farther, that the "said secretary of foreign affairs do and hereby is "directed, to insist on the territorial limits or bounda-"ries of the United States as fixed in the definitive "treaty of peace and friendship between the United "States of America and his Britannick majesty; and "he is further instructed not to form any treaty with "the said encargado de negocios, unless the said limits "or boundaries are thereby acknowledged and se-"cured;" and on the question to agree to this amendment, the yeas and nays being required by Mr. King—

New Hampshire,	Mr. Livermore,	Ay.	Ay.
	Mr. Long,	Ay.	
Massachusetts,	Mr. Gorham,	Ay.	Ay.
	Mr. King,	Ay.	
Rhode Island,	Mr. Manning,	Ay.	Ay.
	Mr. Miller,	Ay.	
Connecticut,	Mr. Johnson,	Ay.	Ay.
	Mr. Sturges,	Ay.	

New York,	Mr. Lawrence,	Ay.	Ay.
	Mr. Haring,	Ay.	
	Mr. Smith,	Ay.	
New Jersey,	Mr. Cadwallader,	Ay.	Ay.
	Mr. Hornblower,	Ay.	
Pennsylvania,	Mr. Bayard,	Ay.	Divided.
	Mr. St. Clair,	No.	
Maryland,	Mr. Henry,	No.	No.
	Mr. Harrison,	No.	
	Mr. Ramsay,	Ay.	
Virginia,	Mr. Grayson,	No.	No.
	Mr. Carrington,	No.	
	Mr. Lee,	No.	
North Carolina,	Mr. Bloodworth,	No.	No.
	Mr. White,	No.	
South Carolina,	Mr. Bull,	No.	No.
	Mr. Pinckney,	No.	
	Mr. Huger,	No.	
	Mr. Parker,	No.	
Georgia,	Mr. Houstoun,	No.	Divided.
	Mr. Few,	Ay.	

So the question was lost.

A division of the report and a decision on the first resolution being called for, a motion was made by Mr. Pinckney, seconded by Mr. Carrington, to postpone the first resolution in order to take up the following:

That the commission and instructions issued to J. Jay, secretary for foreign affairs, to negotiate on the part of the United States, with don Diego de Gardoqui, encargado de negocios of his catholick majesty, be and the same are hereby revoked and repealed.

And on the question to postpone for the purpose abovementioned, the yeas and nays being required by Mr. Bloodworth—

New Hampshire,	Mr. Livermore,	No.	No.
	Mr. Long,	No.	
Massachusetts,	Mr. Gorham,	No.	No.
	Mr. King,	No.	
Rhode Island,	Mr. Manning,	No.	No.
	Mr. Miller,	No.	
Connecticut,	Mr. Johnson,	No.	No.
	Mr. Sturges,	No.	
New York,	Mr. Lawrence,	No.	No.
	Mr. Haring,	No.	
	Mr. Smith,	No.	
New Jersey,	Mr. Cadwallader,	No.	No.
	Mr. Hornblower,	No.	
Pennsylvania,	Mr. Bayard,	No.	No.
	Mr. St. Clair,	No.	
Maryland,	Mr. Henry,	Ay.	Ay.
	Mr. Harrison,	Ay.	
	Mr. Ramsay,	Ay.	
Virginia,	Mr. Grayson,	Ay.	Ay.
	Mr. Carrington,	Ay.	
	Mr. Lee,	Ay.	
North Carolina,	Mr. Bloodworth,	Ay.	Ay.
	Mr. White,	Ay.	
South Carolina,	Mr. Bull,	Ay.	Ay.
	Mr. Pinckney,	Ay.	
	Mr. Huger,	Ay.	
	Mr. Parker,	Ay.	

Georgia,	Mr. Houstoun, Mr. Few,	Ay. No.	Divided.

So it passed in the negative.

AUGUST 29, 1786.

Congress resumed the consideration of the report of the committee of the whole, when a motion was made by the delegates of Virginia, That the further consideration of the report be postponed in order to take up the following:

The United States in Congress assembled having, upon the report of a committee to whom was referred the commission of don Diego de Gardoqui, on the 20th July, 1785, Resolved, That the honourable John Jay, secretary to the United States of America for the department of foreign affairs, be and hereby is invested with full power, in behalf of the United States of America, to treat, adjust, conclude and sign with don Diego de Gardoqui, encargado de negocios of his catholick majesty, whatever articles, compacts and conventions may be necessary for establishing and fixing the boundaries between the territories of the said United States and those of his catholick majesty, and for promoting the general harmony and mutual interest of the two nations. That the secretary of the United States of America for the department of foreign affairs be and he is hereby instructed, previous to his making propositions to don Diego de Gardoqui, or agreeing with him on any article, compact or convention, to communicate to Congress the propositions to be made, or

received relative to such article, compact or convention.

And afterwards on the 25th of August following, upon the report of a committee on a letter of the secretary for foreign affairs, complaining of the restrictions imposed on him in the said instructions, Resolved, That the last paragraph in the instructions to the secretary to the United States for the department of foreign affairs, passed the 20th of July, 1785, for entering into a treaty, compact or convention with the encargado de negocios of his catholick majesty, in the words following: "That the secretary of the United States of America for the department of foreign affairs be and hereby is instructed, previous to his making propositions to don Diego de Gardoqui, or agreeing with him on any article, compact or convention, to communicate to Congress the propositions to be made or received relative to such article, compact or convention," be repealed, and that the following be substituted in its place: "That the secretary to the United States for the department of foreign affairs be and he is hereby instructed, in his plan of a treaty with the encargado de negocios of his catholick majesty, particularly to stipulate the right of the United States to their territorial bounds, and the free navigation of the Mississippi, from the source to the ocean, as established in their treaties with Great Britain; and that he neither conclude nor sign any treaty, compact or convention with the said encargado de negocios, until he hath previously communicated it to Congress and received their approbation."

And the said secretary having, on the 29th of May, 1786, addressed a letter to the President of Congress on the subject of the said negotiations to the following effect:

"Office for Foreign Affairs, May 29, 1786.—Sir, In my negotiations with Mr. Gardoqui I experience certain difficulties, which, in my opinion, should be so managed as that even the existence of them should remain a secret for the present. I take the liberty therefore of submitting to the consideration of Congress, whether it might not be advisable to appoint a committee, with power to instruct and direct me on every point and subject relative to the proposed treaty with Spain. In case Congress should think proper to appoint such a committee, I really think it would be prudent to keep the appointment of it secret, and to forbear having any conversation on subjects connected with it, except in Congress, and in meetings on the business of it. With great respect I have the honour to be your excellency's most obedient and very humble servant, (Signed) John Jay."

And upon being afterwards called before Congress to explain, &c. proceeded, in a written statement of August 13th, for the reasons therein contained, to advise, that the United States enter into a treaty with Spain upon the following principles. 1. That all commercial regulations affecting each other shall be founded in perfect reciprocity. Spanish merchants shall enjoy all the commercial privileges of native merchants in the United States, and the American merchants shall enjoy all the commercial privileges

of native merchants in the kingdom of Spain, and in the countries and other islands belonging and adjacent thereto. The same privileges shall extend to their respective vessels and merchandise consisting of the manufactures and productions of their respective countries. 2. Each party may establish consuls in the countries of the other, excepting such provinces in Spain into which none have heretofore been admitted, viz.. Bilboa and Guipuscoa, with such powers and privileges as shall be ascertained by a particular convention. 3. That the bona fide manufactures and productions of the United States, tobacco only excepted, which shall continue under its present regulations, may be imported in American or Spanish vessels into any parts of his majesty's European dominions and islands aforesaid, in like manner as if they were the productions of Spain; and on the other hand that the bona fide manufactures and productions of his majesty's dominions may be imported into the United States in Spanish or American vessels, in like manner as if they were the manufactures and productions of the said states: and further, that all such duties and imposts as may mutually be thought necessary to lay on them, by either party, shall be ascertained and regulated on principles of exact reciprocity, by a tariff to be formed by a convention for that purpose, to be negotiated and made within one year after the exchange of the ratifications of this treaty; and in the mean time that no other duties or imposts shall be exacted from each others merchants and ships, than such as may be payable by natives in like cases. 4. That inasmuch

as the United States, from not having mines of gold and silver, may often want supplies of specie for a circulating medium, his catholick majesty, as a proof of his good will, agrees to order the masts and timber which may from time to time be wanted for his royal navy, to be purchased and paid for in specie in the United States; provided the said masts and timber shall be of equal quality, and when brought to Spain shall not cost more than the like may there be had from other countries. 5. It is agreed that the articles commonly inserted in other treaties of commerce for mutual and reciprocal convenience shall be inserted in this; and that this treaty, and every article of stipulation therein, shall continue in full force for years, to be computed from the day of the date thereof. In consideration for which we are to forbear the navigation of the Mississippi for years.

The secretary having thus, agreeably to his statement aforesaid, conducted the negotiation committed to his care with the encargado of Spain to a point, it becomes the duty of the United States to examine well the measures they now take, that they may be calculated to secure the friendship of the catholick king, and preserve at the same time the honour and the interests of the confederacy. These must be either in conformity with the opinions of the secretary, or, from a conviction of their impropriety, by adopting some other plan, which shall appear preferable to it; it will therefore be well, in the first instance, to examine the plan itself.

The secretary hath united the project of a commercial treaty with Spain, with the interfering claims of the

two powers respecting the boundaries and the Mississippi, and proposes, that to obtain what he calls liberal terms in commerce, we should by compact forbear the use of the navigation of the Mississippi for the period of the treaty; that the claims of the parties respecting the boundaries remain as they are, to be the subject of future discussion and compromise. The project is a plain and simple one. It proposes to give the merchants, the vessels, and the productions and manufactures of each country in the ports of each other, viz. those of Spain in the ports of the United States, and those of the United States in the ports of Spain and the Canaries, the same privileges as if they were those of the country itself. It behooves us, therefore, in the first instance to inquire, what alteration this will make in those instances from the condition on which we now stand. Secondly, whether this alteration, if there should be any, will be beneficial to the United States.

1. As to merchants. We cannot suppose (and believe the contrary to be the case) that the king of Spain makes any discrimination in the ports aforesaid between merchants, his subjects, and those of other nations. The laws of Spain distinguish only articles of commerce, and those into *such as are* and *such as are not contraband;* and the penalties and privileges are precisely the same in both instances in their application to foreigners and subjects. If discriminations therefore in this line can be beneficial, we tie up our hands from extending them to our citizens, without obtaining any consideration for it.

2. As to vessels engaged in the carriage of the manufactures of both countries. Spain hath no navi-

gation act. To the ports which are open, the vessels of all countries are admitted, and in the carriage even of her own productions and manufactures, upon the same footing with those of her own subjects. Here we bind up ourselves again, without a valuable consideration for it.

3. As to productions, &c. The two nations engage to receive those of each other into the ports aforesaid, as if they were their own. With respect to Spain and the Canaries this is certainly the case at present. The productions, &c. of the United States (tobacco excepted, which is hereby excluded) are admitted into the ports aforesaid, in the most liberal manner that the article will admit a construction of, and precisely upon the same terms with similar articles, the growth of the colonies of Spain, in different quarters of the globe: so that this treaty will not open to us a single port, nor admit us into those now open upon better terms than those we now enjoy. Can these positions be controverted, that neither our merchants, our vessels, nor our productions, will be received into the ports of Spain and the Canaries, upon different terms from those on which they are now received? If this is not the case, let the contrary be shown.

But how will the secretary's project affect us? The merchants of Spain shall have in our ports the rights of the native merchants of America. When we consider that our commerce is subjected, in every article, to the most severe restrictions, in almost every foreign port; that under the necessary encouragement given by France and Britain to their own fisheries, that article is excluded from their ports; that the Mediterra-

nean sea is shut against us; and that it is the interest of those powers, as it would after this treaty be that of Spain also, it should be so always; that the West India islands are also occluded almost altogether; that the wheat and rice trade is from these causes greatly injured; that the tobacco is a monopoly in the hands of the farmers general in France; in Spain a contraband. Thus banished from the European countries and their dependencies, one would suppose it the duty of every wise American statesman to secure our rights and interests at home; to give in our own ports to our own citizens exclusive privileges: but of this advantage the project would deprive them.

Spain shall be admitted into the carriage of our productions, &c. upon the same footing that we are into that of hers. If the materials of both parties were such as to employ the same number of vessels in the carriage, such a compact would, on the part of these states, in their circumstances, be unwise. But when we consider how few ships will be employed in the carriage of the productions, &c. of Spain, how unimportant they are in point of bulk and proportion to that of the productions of these states, the disadvantage of the stipulation must obviously occur. How contrary would such a stipulation be to the policy of Great Britain, to the policy of her navigation act, an act which gives to her own subjects, in their intercourse with all other nations, high privileges and immunities they do not enjoy. To the wisdom of this act and her other regulations in commerce, it is owing, that she hath attained to such a height of power and grandeur on the seas, as to be at the same time the terrour and

the admiration of the world; that her subjects have obtained such commercial wealth and astonishing resources, as to be able to support her in the most splendid enterprises, and the longest and most difficult wars that her councils could devise, or the change of fortune expose her to. Yet of the right of adopting and pursuing such a system of policy, or in any degree discriminating in favour of our own carriage, would the project deprive us.

Spain shall have a right to bring her manufactures, &c. here, and take off our own, (tobacco excepted) in the same manner as if they were her own. It is difficult to understand the nature of this engagement. If by this it is meant that productions, &c. of the one shall of right be admitted into the ports of the other, independent of the will of the other, after this treaty for that term, the duties remaining as they are, (tobacco only excepted) its operation is very extensive and important. The parties have in that instance given up the right of prohibition or restriction on imports or exports, which do not apply at the time to similar articles of their own. The case is perhaps without a precedent, and one would suppose it never could have one, unless the family compact between the different branches of the house of Bourbon may be considered as such, which was even between those nations found inconvenient; and afterwards by the treaty of Paris, in 1763, annulled. Independent nations have always heretofore retained to themselves the right of regulating their own interiour police, which they could not do if thus connected, and made dependent on that of others, and by that means of securing to themselves a

reciprocity in their intercourse with other nations. Many are the purposes to which the exercise of this power in different countries is made subservient, depending in each on a variety of circumstances; the nature of the government, the manners of the people, state of population, resources, and the purposes to which it might incline to turn them, with others, that upon examination might occur. But here they might be defeated. If, for instance, the object was to promote virtue and frugality, by prohibiting the importation of foreign luxuries; if to encourage manufactures and to countenance the mechanical arts at home, by prohibiting imports from other countries, the right by this treaty would be abrogated. In short, the police of these states would be so interwoven with that of Spain, and the management of her own system made so dependent on her will, that we should not be able to act on it afterwards. Such a stipulation would also be contrary to the federal compact; for by it each state retains the right of prohibiting the importation or exportation of any species of goods or commodities whatever. If such then is its purport, it is in direct violation of the compact itself, and of course void. If it is our intention to merit and preserve the confidence of our constituents, we should hold this compact sacred: and if to support any character among the nations of the earth, we should enter into no engagements we cannot fulfil. It is sufficiently low already; we need not debase it further. If, on the other hand, they retain the right of prohibiting, or of encouraging imports and exports, by imposing what duties they may from time to time think proper, under this restriction only,

that their subjects and citizens respectively shall pay in the ports of each other the duties of natives only, the effect will be very confined and unimportant. It is still within the power of each nation to suspend all commercial intercourse with the other; for by prohibiting the importation of the manufactures and productions of the other, by its own subjects or citizens, the prohibition is extended to those of the other, and the commerce at an end. Each party still retains the right of contracting with others, and without restraint. For instance, Spain might covenant with France to admit her flour or fish into her ports, paying the duty of five per cent. ad valorem; and afterwards impose twenty per cent. on similar articles from these states. If the same duty on our commodities was imposed equally on her own and our citizens, there would be no violation of the treaty; and thus, while she preserved her faith with us, she would give a monopoly in these articles to France. So that in either view, this stipulation, which the secretary holds to be so liberal and advantageous, will not bear a close examination. It presents at first view, in appearance, plausible colours, but when investigated, will be found to be either mischievous, or at best of no advantage to these United States.

Our treaties with France, the United Netherlands, Sweden, Russia, &c. stipulate to each, "the right of "the most favoured nations." These nations, therefore, coming into the terms of Spain, will be entitled to these benefits; and that they will, cannot be questioned; for in so doing, they give up little or nothing. The evils of this project will therefore be almost uni-

versal, and of course without remedy. They will also of right require a consideration for so doing, equivalent to the value of the occlusion of the Mississippi. In addition to which the article of tobacco will by compact be excluded from all their ports, as well as from those of Spain.

Spain is, of all countries, the one from whose commercial restrictions we have the least to fear; and of course the one with whom there is the least necessity for our binding ourselves under any engagements to. Her exports are but few, and her commerce with all nations against her. Encumbered with her immense and opulent colonies, the great exertion of the Spanish monarchy is to keep them together. The price of an alliance with Britain, is exclusive advantages in trade. This separates her from France; and in the superiority of her fleets puts her commerce and her colonies together into the arms of Britain. Spain will therefore maintain her connexions with France, from whose superiority by sea she hath less to fear, and cultivate the friendship of the United States. A connexion with Britain turns the scale against the other powers in favour of Britain, and makes her a British colony. A connexion with France and the allies of France preserves things as they now stand: we may therefore safely conclude, that as the friendship of the United States must form an essential part of her system, that if she fails in the present object, which from the disposition of the United States (made known to her by the secretary himself at the court of Spain, in the midst of the war, and while surrounded with difficulties) she must calculate on, she will either come forward and grant

fully the terms we require, or at least still seek an accommodation by the most friendly and conciliating attention to our interests. By procrastination she will still court our commerce, and continue to exert her influence with the regency of Algiers, &c. for the relief of our prisoners, and with other powers in our favour by bargain. Unless these advantages become a part of the treaty, we lose them.

As to the surrender or forbearance of the use of the navigation of the Mississippi for the term proposed, for the consideration proposed, (the right of the United States to dismember the government being out of the question) it is inadmissible for the reasons above stated; but it is also inadmissible upon the principle of the right, and independent of the right, upon the highest principles of national expedience, which apply even if the commercial project were an advantageous one. In the present state of the powers of Congress, it should be the policy of every wise statesman to pursue such a system of conduct as shall be best calculated to gain the confidence of the several states in the federal councils, and thereby an extension of their powers; but this measure we apprehend would tend to defeat that object. The states who have ceded it, and the confederacy at large, look up to the western lands as a substantial fund for the discharge of the publick debt. The value of these lands will depend in a great measure on the navigation of the Mississippi. By suspending this right we depreciate this fund, unnecessarily burden the confederacy with an additional weight, and proportionally injure the publick creditors. By the contract with Virginia

it is stipulated, that the western country shall be divided into states, and admitted with the rights of the original states into the confederacy. The spirit of this compact is, that the territory should retain all its rights, and have them promoted under the patronage of Congress. This act would therefore be a direct violation of it, and have a tendency to fix the weight of population on one side of the continent only. But the dismemberment of the government, which this unquestionably is, without the consent of the state interested, one would suppose would prevent even the consideration of the subject by Congress. That the United States have a right to the free navigation of the Mississippi, and the boundaries as established in the treaty with Great Britain, is a truth too well established in the journals of Congress, and too fully supported by their acts on the subject, to require any thing to be said at this day in its favour. To proceed on a contrary principle would manifest such a contradiction to their former acts, and be such a subversion of the rights of nature and the states, as to lessen them throughout the world. It would also be such a sacrifice for particular purposes, as would be obvious to even the most undiscerning. The right, therefore, cannot now be called in question; nor can it be a principle on which we are to act. "Can the United "States then dismember the government by a treaty "of commerce?"

To evince the contrary let us recur to the writers on the laws of nations on the subject. Vattel, vol. i. p. 105. book 1. chap. 21. sec. 260. "The prince or superiour "of the society, whatever he is, being naturally no

"more than the administrator, and not the proprietor "of the state, his authority, as sovereign or head of the "nation, does not of itself give him a right to alienate "or dispose of the publick property. The general "rule then is, that the superiour cannot dispose of the "publick property, as to its substance. If the supe- "riour make use of this property, the alienation he "makes of it will be invalid, and may at any time be "revoked by his successor, or by the nation. This is "the law commonly received by France; and it was "upon this principle that the duke of Sully advised "Henry fourth to resume the possession of all the do- "mains of the crown alienated by his predecessors.

"The nation having the free disposal of all the pro- "perty belonging to it, it may convey this right to the "sovereign, and consequently confer upon him that of "alienating and mortgaging the publick property. "But this right not necessarily belonging to the con- "ductor of the state to enable him to render the peo- "ple happy by his government, it is not to be presum- "ed that the nation has given it him; and if it has not "made an express law for that purpose, it ought to be "maintained that the prince is not invested with it." § 265. "The prince, the superiour of whatever kind, "has he the power to dismember the state? Let us "answer as we have done above with respect to the "domain. If the fundamental laws forbid the dis- "membering, he cannot do it without the concurrence "of the nation, or its representatives. But if the "laws are silent, and if the prince has received a full "and absolute authority, he is then the depositary of "the rights of the nation, and the organ by which it

"declares its will. The nation ought never to aban-
"don its members, but in a case of necessity, or with
"a view to the publick safety, and to preserve itself from
"total ruin; and the prince ought only to cede them
"for the same reasons; but since he has received an
"absolute authority, he is to judge of the necessity of
"the case, and what the safety of the state requires.

"On occasion of the treaty of Madrid, the prin-
"cipal persons in France assembled at Cognac after
"the king's return, unanimously concluded that his
"authority did not extend so far as to dismember the
"crown, and the treaty was declared void, as contrary
"to the fundamental law of the kingdom; indeed it
"was done without sufficient power, the law in express
"terms refusing the king the right of dismembering
"the kingdom: the concurrence of the nation was
"necessary for this purpose, and it might give its con-
"sent by the medium of the states general. Charles
"the fifth ought not to have released his prisoner
"before those very states had approved the treaty, or
"rather, making a more generous use of his victory, he
"should have imposed less rigorous conditions, such
"as it was in the power of Francis to grant, and with
"which he could not have refused to comply without
"shame. But at present, when the states general do
"not assemble in France, the king remains the sole
"organ of the state with respect to other powers:
"they have a right to take his will for that of all
"France; and the cessions the king might make them,
"would remain valid, in virtue of the tacit consent by
"which the nation has submitted all power into the
"hands of the king with respect to treaties. Were it

"otherwise, no certain treaty could be entered into "with the crown of France. However, by way of pre- "caution, other powers have often demanded that "their treaties should be registered in the parliament "of Paris; but at present this formality seems to be "laid aside."

Vol. ii. b. 116. p. 4. ch. 2. sect. 10. "When a "limited power is authorized to make peace, as he can- "not of himself grant every condition, in order to treat "on sure grounds with him, it must be required that "the treaty of peace be approved by the nation or the "power which can make good the conditions. If for "instance, in treating of a peace with Sweden, a de- "fensive alliance and a guaranty be required for the "condition, this stipulation will be of no effect, unless "approved and accepted by the diet, which alone has "the power of imparting validity to it. The kings of "England conclude treaties of peace and alliance; but "by these treaties, they cannot alienate any of the "possessions of the crown without the consent of par- "liament."

By the second article of the confederation of these United States, each state retains its sovereignty, free- dom and independence, and every power, jurisdiction and right which is not therein expressly delegated to the United States in Congress assembled. This is a fundamental law of the nation, and the powers granted in the ninth article to make treaties must be construed in subordination to it. No treaty even of peace en- tered into by the United States in Congress assembled, extending to a cession or suspension of the rights of any of the states without their consent, can therefore

be valid; much less can such a treaty of commerce, which in point of political necessity can never be so pressing.

How then shall we proceed in the present critical circumstances with Spain? An honourable arrangement with the court of Spain upon these points, and an advantageous treaty of commerce, though indeed whilst our trade is so restrained by the piratical powers, it will be of less consequence than it otherwise would be, are certainly desirable objects. A continuance of the negociation in the hands of the secretary alone, as his sentiments are now known in Congress, and differ so widely from the opinions of several states in this confederacy, especially on the points relative to the Mississippi and the boundaries, would not be advisable. Upon the first point, therefore, it will be proper to instruct our charge d'affaires at the court of Spain to agree with that court on the principles: the treaty ultimately to be concluded here; that it be negociated under the mediation of France. Upon the second it will be proper, agreeably to the arrangement at Annapolis, that two other commissioners be appointed with Mr. Jay, the consent of the majority of whom shall be necessary to conclude the treaty.

It is to be observed, that the secretary hath no power to treat on the subject of commerce, being confined solely to the interfering claims of the two parties as above. The power to form such a treaty with Spain having been committed to Messrs. Adams, Franklin and Jefferson, at Annapolis, of 7th May, 1784, under a commission which had then near one year to run, with all the other powers of Europe, upon principles

then agreed on as applying to all. This must be the more obvious from the care the United States have always taken to establish the principles in Congress upon which their treaties should be formed, and making their ministers the instruments only of their will, especially at Annapolis, in 1784, when their system of commercial policy to be established in treaties was, after mature consideration, agreed to, and men appointed from different quarters of the union, as being necessary to concentre a representation of the different interests. Can it be supposed then, that the commission of these gentlemen with respect to Spain, without even mentioning it, or agreeing on the principles in the instructions to the secretary, or even mentioning the subject of trade in said instructions, were repealed, and he thus loosely authorized to form a treaty of commerce? That their interfering claims, however, may be amicably settled, and that the two nations may enjoy reciprocal advantages in trade, it is hereby

Resolved, That the charge des affaires of the United States at the court of Spain be instructed to assure his catholick majesty of the high regard the United States entertain for his friendship, and of their earnest desire to cultivate and preserve always the best understanding between his majesty and the said states. That as an evidence of this disposition they are willing to settle their interfering claims respecting the Mississippi, and the boundaries, upon the following principles. 1. That New Orleans be made an entrepot for the reception of the bona fide produce of the United States brought down the river Mississippi by the citizens of the said states: such produce to be landed at said port for ex-

portation. That the said citizens be at liberty to return with their boats empty, or with passengers only, up the Mississippi to the places from whence they came. 2. That such produce aforesaid shall pay there, or the merchants exporting it give bond for the payment within six months from the date, of a duty not exceeding per cent. ad valorem at the time of exportation, to the crown of Spain. That such produce aforesaid shall be exported thence in Spanish, American or French vessels, those in the bottoms of Spain under the regulations of Spain, and those in the bottoms of America and France under the regulations of the two countries, by treaty or otherwise. That imports of every kind and country to the said port and up the said river, in American and French bottoms, be prohibited; and that all vessels engaged in transportation of said exports shall come to such port in ballast only. That the United States be authorized to appoint a consul to reside at New Orleans, who shall be responsible for any violation of these stipulations by the citizens of the United States. That American factors be permitted to reside at said port for the management of the business of exportation only. That as to the boundaries, they must insist on those established in their treaty with Great Britain. And further to assure his catholick majesty, that so soon as instructions shall be given to his minister in these states to this effect, the United States will authorize their minister to conclude a treaty in conformity herewith. But that they cannot enter into any treaty or compact whatsoever with his catholick majesty on the

said subjects upon any other terms or conditions whatsoever.

That the honourable Mr. Jefferson be furnished with a copy of these instructions, and directed to make known to his most christian majesty the sincere regard they have for his person and family, the gratitude they bear for his former good offices, and the earnest desire they have of his friendly mediation with the catholick king, that by his interposition the interfering claims of the two nations may be amicably settled.

That the resolutions of the 20th July, 1785, and the 25th of August following, authorizing the secretary of foreign affairs to treat with don Diego de Gardoqui respecting the boundaries and the Mississippi, in the words above recited, be and they are hereby repealed.

That two commissioners be appointed and associated with the secretary of foreign affairs, with powers to enter into a treaty with don Diego de Gardoqui, or such other person as his catholick majesty shall appoint, upon the following principles; upon the Mississippi and the boundaries as above; but that they receive no proposition on the said points until he shall be authorized by his said majesty to accede to the said terms.

That they be authorized to enter into a commercial treaty with Spain upon the following principles: 1st, That each party shall have a right to carry their own produce, manufactures and merchandise, in their own bottoms, to the ports of the other, paying in both cases such duties only as are paid by the most favoured nations, freely where it is freely granted to such na-

tion, or paying the compensation where such nation does the same; and so on as in the 3d, 4th, 5th, 6th, 7th resolutions of the 7th of May, 1784.

On the question to postpone for the purpose abovementioned, the yeas and nays being required by the delegates of Virginia—

New Hampshire,	Mr. Livermore,	No.	No.
	Mr. Long,	No.	
Massachusetts,	Mr. Gorham,	No.	No.
	Mr. King,	No.	
Rhode Island,	Mr. Manning,	No.	No.
	Mr. Miller,	No.	
Connecticut,	Mr. Johnson,	No.	No.
	Mr. Sturges,	No.	
New York,	Mr. Lawrence,	No.	No.
	Mr. Haring,	No.	
	Mr. Smith,	No.	
New Jersey,	Mr. Cadwallader,	No.	No.
	Mr. Hornblower,	No.	
Pennsylvania,	Mr. Bayard,	No.	No.
	Mr. St. Clair,	No.	
Maryland,	Mr. Henry,	Ay.	Ay.
	Mr. Harrison,	Ay.	
	Mr. Ramsay,	Ay.	
Virginia,	Mr. Grayson,	Ay.	Ay.
	Mr. Monroe,	Ay.	
	Mr. Carrington,	Ay.	
	Mr. Lee,	Ay.	
North Carolina,	Mr. Bloodworth,	Ay.	Ay.
	Mr. White,	Ay.	

South Carolina,	Mr. Bull,	Ay.	Ay.
	Mr. Pinckney,	Ay.	
	Mr. Huger,	Ay.	
	Mr. Parker,	Ay.	
Georgia,	Mr. Houstoun,	Ay.	Ay.
	Mr. Few,	Ay.	

So it passed in the negative.

On the question to agree to the first resolution reported by the committee of the whole, the yeas and nays being required by the delegates of Virginia—

New Hampshire,	Mr. Livermore,	Ay.	Ay.
	Mr. Long,	Ay.	
Massachusetts,	Mr. Gorham,	Ay.	Ay.
	Mr. King,	Ay.	
Rhode Island,	Mr. Manning,	Ay.	Ay.
	Mr. Miller,	Ay.	
Connecticut,	Mr. Johnson,	Ay.	Ay.
	Mr. Sturges,	Ay.	
New York,	Mr. Lawrence,	Ay.	Ay.
	Mr. Haring,	Ay.	
	Mr. Smith,	Ay.	
New Jersey,	Mr. Cadwallader,	Ay.	Ay.
	Mr. Hornblower,	Ay.	
Pennsylvania,	Mr. Bayard,	Ay.	Ay.
	Mr. St. Clair,	Ay.	
Maryland,	Mr. Henry,	No.	No.
	Mr. Harrison,	No.	
	Mr. Ramsay,	No.	

Virginia,	Mr. Monroe,	No.	No.
	Mr. Carrington,	No.	
	Mr. Lee,	No.	
North Carolina,	Mr. Bloodworth,	No.	No.
	Mr. White,	No.	
South Carolina,	Mr. Bull,	No.	No.
	Mr. Pinckney,	No.	
	Mr. Huger,	No.	
	Mr. Parker,	No.	
Georgia,	Mr. Houstoun,	No.	No.
	Mr. Few,	No.	

So it was

Resolved, That so much of the resolution of Congress of the 25th day of August, 1785, being an instruction to the secretary of the United States for the department of foreign affairs, as is contained in the following words, namely, "and that the following be "substituted in its place; that the secretary of the "United States for the department of foreign affairs "be and hereby is instructed, in his plan of a treaty "with the encargado de negocios of his catholick ma- "jesty, particularly to stipulate the right of the United "States to their territorial boundaries, and the free "navigation of the Mississippi, from the source to the "ocean, established in their treaties with Great Bri- "tain; and that he neither conclude or sign any "treaty, compact or convention, until he hath pre- "viously communicated it to Congress, and received "their approbation," be and the same is hereby repealed and made void.

AUGUST 30, 1786.

Congress proceeded in the consideration of the report of the committee of the whole; and the second resolution reported by the committee being read, a motion was made by Mr. King, seconded by Mr. Smith, to amend the resolution by striking out the last clause from "provided farther that the said secretary for "foreign affairs do and hereby is directed," inclusive, to the end, and in lieu thereof to insert "provided far- "ther, that the said secretary for foreign affairs do and "hereby is directed, to insist on the territorial limits "or boundaries of the United States, as fixed in the "definitive treaty of peace and friendship between the "United States of America and his Britannick majesty; "and he is farther instructed, not to form any treaty "with the said encargado de negocios unless the said "limits or boundaries are thereby acknowledged and "secured."

A motion was made by Mr. Pinckney, seconded by Mr. Monroe, to postpone the farther consideration of the resolution and amendment, in order to take up the following proposition:

Whereas under the 9th of the articles of the confederation it is declared "The United States in "Congress assembled shall not enter into treaties or "alliances, unless nine states assent to the same:" And whereas by resolutions of 20th July and 25th day of August, 1785, the honourable John Jay, secretary for foreign affairs, was authorized with the assent of the United States to negotiate with don Diego de Gar-

doqui, encargado de negocios of his catholick majesty, under certain instructions, the last clause of which was in these words, "and that the following be substituted; "that the secretary to the United States for the de- "partment of foreign affairs be and hereby is instructed, "in his plan of a treaty with the encargado de nego- "cios of his catholick majesty, particularly to stipulate "the right of the United States to their territorial "bounds, and the free navigation of the Mississippi "from the source to the ocean, established in their "treaties with Great Britain; and that he neither con- "clude nor sign any treaty, compact or convention "with the said encargado de negocios, until he hath "previously communicated it to Congress, and re- "ceived their approbation;" from which qualifications and restrictions the said John Jay could not depart without a violation of his instructions: And as the repeal by seven states of the said recited last clause has the effect of enlarging the powers of the said negotiator, and granting him an authority he did not possess under the former instructions, to which the assent of nine states is alone constitutionally competent under the confederation, as the removal of a positive restraint confers a positive authority, and as a delegate cannot exceed the authority delegated to him, nor delegate to another a greater power than he himself possesses, it follows, that the right of entering into treaties being delegated by the confederation to the concurrent assent of nine states in Congress assembled, this power cannot be delegated to others, nor any alterations made in instructions upon this subject, but by a similar concurrence of nine states. The right of entering into

treaties comprehends an absolute and exclusive right of admitting or rejecting every article of such treaty, as well as the whole collectively. This right cannot be exercised by seven states, consequently it cannot be delegated by them to any other person or description of persons, without an absolute violation of the principles of the confederation. If a treaty entered into in pursuance of instructions be not ratified, by the law of nations it is *causa belli*. If only seven states repeal the said last recited clause of Mr. Jay's instructions, and he thereupon proceeds to enter into a treaty upon different principles than those under which he was formerly authorized by nine states, the said treaty cannot be considered as formed under instructions constitutionally sanctioned by the authority required under the confederation; nor are the United States, under the laws or usage of nations, bound to ratify and confirm the same: Therefore,

Resolved, That the secretary for foreign affairs be informed, that as the said recited clause of his instructions, restraining him from entering into any treaty or compact with the encargado de negocios of his catholick majesty, which did not fix the territorial limits of the United States agreeable to the definitive treaty with Great Britain, and the right of the United States to the free navigation of the Mississippi from its source to the ocean, was repealed by the assent of seven states, when nine were alone competent to such alteration and enlargement of his powers, the United States in Congress assembled do not consider him as authorized to negotiate upon different principles than those under which he was formerly instructed by the said resolu-

tions of the 20th July and 25th August, 1785; nor, should he proceed to enter into a treaty upon other principles, do they conceive the United States bound under the law of nations to ratify and confirm a compact formed under powers thus unconstitutional and incompetent.

On the question to postpone for the purpose abovementioned, the yeas and nays being required by Mr. Bloodworth—

New Hampshire,	Mr. Livermore,	No.	No.
	Mr. Long,	No.	
Massachusetts,	Mr. Gorham,	No.	No.
	Mr. King,	No.	
Rhode Island,	Mr. Manning,	No.	No.
	Mr. Miller,	No.	
Connecticut,	Mr. Johnson,	No.	No.
	Mr. Sturges,	No.	
New York,	Mr. Lawrance,	No.	No.
	Mr. Haring,	No.	
	Mr. Smith,	No.	
New Jersey,	Mr. Cadwallader,	No.	No.
	Mr. Hornblower,	No.	
Pennsylvania,	Mr. Bayard,	No.	No.
	Mr. St. Clair,	No.	
Maryland,	Mr. Henry,	Ay.	Ay.
	Mr. Harrison,	Ay.	
	Mr. Ramsay,	Ay.	
Virginia,	Mr. Grayson,	Ay.	Ay.
	Mr. Monroe,	Ay.	
	Mr. Carrington,	Ay.	
	Mr. Lee.	Ay.	

North Carolina,	Mr. Bloodworth,	Ay.	Ay.
	Mr. White,	Ay.	
South Carolina,	Mr. Bull,	Ay.	Ay.
	Mr. Pinckney,	Ay.	
	Mr. Huger,	Ay.	
	Mr. Parker,	Ay.	
Georgia,	Mr. Houstoun,	Ay.	Ay.
	Mr. Few,	Ay.	

So it passed in the negative.

On the question to agree to the amendment, the yeas and nays being required by Mr. Smith—

New Hampshire,	Mr. Livermore,	Ay.	Ay.
	Mr. Long,	Ay.	
Massachusetts,	Mr. Gorham,	Ay.	Ay.
	Mr. King,	Ay.	
Rhode Island,	Mr. Manning,	Ay.	Ay.
	Mr. Miller,	Ay.	
Connecticut,	Mr. Johnson,	Ay.	Ay.
	Mr. Sturges,	Ay.	
New York,	Mr. Lawrance,	Ay.	Ay.
	Mr. Haring,	Ay.	
	Mr. Smith,	Ay.	
New Jersey,	Mr. Cadwallader,	Ay.	Ay.
	Mr. Hornblower,	Ay.	
Pennsylvania,	Mr. Bayard,	Ay.	Ay.
	Mr. St. Clair,	Ay.	
Maryland,	Mr. Henry,	No.	No.
	Mr. Harrison,	No.	

Virginia,	Mr. Grayson,	No.	No.
	Mr. Monroe,	No.	
	Mr. Carrington,	No.	
	Mr. Lee,	No.	
North Carolina,	Mr. Bloodworth,	No.	No.
	Mr. White,	No.	
South Carolina,	Mr. Bull,	No.	No.
	Mr. Pinckney,	No.	
	Mr. Huger,	No.	
	Mr. Parker,	No.	
Georgia,	Mr. Houstoun,	No.	Divided.
	Mr. Few,	Ay.	

So it was resolved in the affirmative.

A motion was then made by Mr. St. Clair, seconded by Mr. King, further to amend the resolution reported by the committee of the whole, and after the word "instructed," in the second line, to insert, "to propose, and if possible obtain the following stipulations, viz. that the citizens of the United States shall not be interrupted in transporting the bona fide productions of the United States upon the Mississippi river from the thirty-first degree of north latitude to the city of New Orleans, where they shall be allowed to land the same, and permission be granted to occupy storehouses and other necessary buildings for the reception thereof. That the boats or other vessels, on board of which the said productions shall have been transported to New Orleans, shall have free leave to return up the Mississippi river to any place within the territory of the United States; provided that so far as they navigate below thirty-one de-

"grees north latitude they shall not load any species "of goods, wares or merchandise whatsoever, but "by permission of the Spanish government in Florida. "That American merchants or factors shall have free "leave to reside at New Orleans, for the purpose of "receiving such American productions as may be "brought down the said river Mississippi, and for "exporting the same from thence in American or "Spanish bottoms, under the regulations of the re-"spective countries. That a duty of per cent. "ad valorem shall be paid to the crown of Spain "upon all American produce shipped from the said "city of New Orleans in American bottoms within six "months after such exportation, for which good and "sufficient bonds shall be given previous to the de-"parture of any vessel on board of which such pro-"duce shall be laden. That American vessels may "freely navigate up the said river Mississippi, from "the mouth to the said city of New Orleans; but shall "not carry any species of goods, wares or merchan-"dise whatever contrary to the regulations of the "crown of Spain, under pain of seizure and confis-"cation."

A motion was made by Mr. Monroe, seconded by Mr. Grayson, to amend the amendment by striking out the words "if possible obtain," and inserting "that he enter into no treaty, compact or convention, "which shall not include;" and on the question to agree to the amendment to the amendment, the yeas and nays being required by Mr. Monroe—

New Hampshire,	Mr. Livermore,	No.	No.
	Mr. Long,	No.	
Massachusetts,	Mr. Gorham,	No.	No.
	Mr. King,	No.	
Rhode Island,	Mr. Manning,	No.	No.
	Mr. Miller,	No.	
Connecticut,	Mr. Johnson,	No.	No.
	Mr. Sturges,	No.	
New York,	Mr. Lawrance,	No.	No.
	Mr. Smith,	No.	
New Jersey,	Mr. Cadwallader,	No.	No.
	Mr. Hornblower,	No.	
Pennsylvania,	Mr. Bayard,	No.	No.
	Mr. St. Clair,	No.	
Maryland,	Mr. Henry,	Ay.	Ay.
	Mr. Harrison,	Ay.	
Virginia,	Mr. Grayson,	Ay.	Ay.
	Mr. Carrington,	Ay.	
	Mr. Monroe,	Ay.	
	Mr. Lee,	Ay.	
North Carolina,	Mr. Bloodworth,	Ay.	Ay.
	Mr. White,	Ay.	
South Carolina,	Mr. Bull,	Ay.	Ay.
	Mr. Pinckney,	Ay.	
	Mr. Huger,	Ay.	
	Mr. Parker,	Ay.	
Georgia,	Mr. Houstoun,	Ay.	Ay.
	Mr. Few,	Ay.	

So it passed in the negative.

On the question to agree to the amendment, the yeas and nays being required by Mr. Pinckney—

New Hampshire,	Mr. Livermore,	Ay.	Ay.
	Mr. Long,	Ay.	
Massachusetts,	Mr. Gorham,	Ay.	Ay.
	Mr. King,	Ay.	
Rhode Island,	Mr. Manning,	Ay.	Ay.
	Mr. Miller,	Ay.	
Connecticut,	Mr. Johnson,	Ay.	Ay.
	Mr. Sturges,	Ay.	
New York,	Mr. Lawrance,	Ay.	Ay.
	Mr. Smith,	Ay.	
New Jersey,	Mr. Cadwallader,	Ay.	Ay.
	Mr. Hornblower,	Ay.	
Pennsylvania,	Mr. Bayard,	Ay.	Ay.
	Mr. St. Clair,	Ay.	
Maryland,	Mr. Henry,	No.	No.
	Mr. Harrison,	No.	
Virginia,	Mr. Grayson,	No.	No.
	Mr. Monroe,	No.	
	Mr. Carrington,	No.	
	Mr. Lee,	No.	
North Carolina,	Mr. Bloodworth,	No.	No.
	Mr. White,	No.	
South Carolina,	Mr. Bull,	No.	No.
	Mr. Pinckney,	No.	
	Mr. Huger,	No.	
	Mr. Parker.	No.	

Georgia,	Mr. Houstoun,	No.
	Mr. Few,	No.

So it was resolved in the affirmative.

The resolution being further amended to read as follows: That the secretary to the United States for the department of foreign affairs be and hereby is instructed, to propose, and if possible obtain the following stipulations, viz. That the citizens of the United States shall not be interrupted in transporting the bona fide productions of the United States upon the Mississippi river, from thirty-one degrees north latitude to the city of New Orleans, where they shall be allowed to land the same, and permission be granted them to occupy storehouses and other necessary buildings for the reception thereof. That the boats or other vessels, on board of which the said productions shall have been transported to New Orleans, shall have free leave to return up the Mississippi river to any place within the territory of the United States; provided that so far as they navigate below thirty-one degrees north latitude, they shall not load any species of goods, wares or merchandise whatsoever, but by permission of the Spanish government in Florida. That American merchants or factors shall have free leave to reside at New Orleans for the purpose of receiving such American productions as may be brought down the said river Mississippi, and for exporting the same from thence in American or Spanish bottoms under the regulations of the respective countries. That a duty not exceeding two and a half per cent. ad valorem shall be paid to the crown of Spain, upon all American produce shipped

from the same city of New Orleans, in American bottoms, within six months after such exportation, for which good and sufficient bonds shall be given previous to the departure of any vessel on board of which such produce shall be laden. That American vessels may freely navigate up the said river Mississippi, from the mouth to the said city of New Orleans, but shall not carry any species of goods, wares or merchandise whatever, contrary to the regulations of the crown of Spain, under pain of seizure and confiscation. That if in the course of his negotiation with the encargado de negocios of his catholick majesty, it shall be found indispensable for the conclusion of the same, that the United States and their citizens, for a limited time, should forbear to use so much of the river Mississippi as is south of the southern boundary of the United States, the said secretary be and hereby is authorized and directed, on behalf of the United States, to consent to an article or articles stipulating on their part and that of their citizens, a forbearance of the use of the said river Mississippi for a period not exceeding twenty years, from the point where the southern boundary of the United States intersects the said river to its mouth or the ocean; provided, that such stipulation of a forbearance of the use of the said river for a limited time, as aforesaid, shall not be construed to extinguish the right of the United States, independent of such stipulation, to use and navigate the said river from its source to the ocean; provided further, that the secretary for foreign affairs shall not stipulate, on behalf of the United States, in favour of the exclusive navigation and use of the said river by his catholick majes-

ty and his subjects, below its intersection of the southern boundary of the United States, unless it shall be agreed and stipulated in the same treaty, that the navigation and use of the said river, from the intersection aforesaid to its head or source, be and continue common to the United States and his catholick majesty, and to their respective citizens and subjects; provided farther, that the said secretary of foreign affairs do and hereby is directed to insist on the territorial limits or boundaries of the United States as fixed in the definitive treaty of peace and friendship between the United States of America and his Britannick majesty; and he is further instructed, not to form any treaty with the said encargado de negocios, unless the said limits or boundaries are thereby acknowledged and secured.

On the question to agree to the resolution as amended, the yeas and nays being required by Mr. Pinckney—

New Hampshire,	Mr. Livermore,	Ay.	Ay.
	Mr. Long,	Ay.	
Massachusetts,	Mr. Gorham,	Ay.	Ay.
	Mr. King,	Ay.	
Rhode Island,	Mr. Manning,	Ay.	Ay.
	Mr. Miller,	Ay.	
Connecticut,	Mr. Johnson,	Ay.	Ay.
	Mr. Sturges,	Ay.	
New York,	Mr. Lawrance,	Ay.	Ay.
	Mr. Smith,	Ay.	
New Jersey,	Mr. Cadwallader,	Ay.	Ay.
	Mr. Hornblower,	Ay.	

Pennsylvania,	Mr. Bayard,	Ay.	Ay.
	Mr. St. Clair,	Ay.	
Maryland,	Mr. Henry,	No.	No.
	Mr. Harrison,	No.	
	Mr. Ramsay,	No.	
Virginia,	Mr. Grayson,	No.	No.
	Mr. Monroe,	No.	
	Mr. Carrington,	No.	
	Mr. Lee,	No.	
North Carolina,	Mr. Bloodworth,	No.	No.
	Mr. White,	No.	
South Carolina,	Mr. Bull,	No.	No.
	Mr. Pinckney,	No.	
	Mr. Huger,	No.	
	Mr. Parker,	No.	
Georgia,	Mr. Houstoun,	No.	No.
	Mr. Few,	No.	

So the question was lost,

AUGUST 31, 1786.

A motion was made by Mr. Pinckney, seconded by Mr. Lee, in the words following:

Whereas under the ninth of the articles of confederation it is declared, "The United States in Congress "assembled shall not enter into treaties or alliances "unless nine states assent to the same:"—and whereas by resolutions of the 20th July and 25th day of August, 1785, the honourable John Jay, secretary for foreign affairs, was authorized, with the assent of nine states, to negotiate with don Diego de Gardoqui under certain

instructions, the last clause of which was in the words following, viz. "And that the following be substituted "—that the secretary to the United States for the de- "partment of foreign affairs be and hereby is instruct- "ed, in his plan of a treaty with the encargado de "negocios of his catholick majesty, particularly to "stipulate the right of the United States to their terri- "torial bounds, and the free navigation of the Missis- "sippi from the source to the ocean, established in "their treaties with Great Britain, and that he neither "conclude or sign any treaty, compact or convention "with the said encargado de negocios, until he hath "previously communicated it to Congress and received "their approbation;" from which qualifications and restrictions the said John Jay could not depart without a violation of his instructions: and as the repeal by seven states of the said recited last clause, has the effect of enlarging the powers of the said negotiator, and granting him an authority he did not possess under the former instructions to which the assent of nine states is alone constitutionally competent under the confederation; as the removal of a positive restraint confers a positive authority; and as a delegate cannot exceed the authority delegated to him, nor delegate to another a greater power than he himself possesses, it follows, that the right of entering into treaties being delegated by the confederation to the concurrent assent of nine states in Congress assembled, this power cannot be delegated to others, or any alterations made in instructions upon this subject, but by a similar concurrence of nine states. The right of entering into treaties comprehends an absolute and exclusive right

of admitting or rejecting every article of such treaty, as well as the whole collectively. This right cannot be exercised by seven states; consequently it cannot be delegated by them to any other person, or description of persons, without an absolute violation of the principles of the confederation. If a treaty entered into in pursuance of instructions be not ratified, by the law of nations it is *causa belli*. If only seven states repeal the said last recited clause of Mr. Jay's instructions, and he thereupon proceeds to enter into a treaty upon different principles than those under which he was formerly authorized by nine states, the said treaty cannot be considered as formed under instructions constitutionally sanctioned by the authority required under the confederation; nor are the United States, under the laws or usage of nations, bound to ratify and confirm the same: Therefore,

Resolved, That the secretary for foreign affairs be informed, that the said recited clause of his instructions, restraining him from entering into any treaty or compact with the encargado de negocios of his catholick majesty, which did not fix the territorial limits of the United States agreeable to the definitive treaty with Great Britain and the right of the United States to the free navigation of the Mississippi, from its source to the ocean, was repealed by the assent of seven states, when nine were alone competent to such alteration and enlargement of his powers, the United States in Congress assembled do not consider him as authorized to negotiate upon different principles than those under which he was formerly instructed by the said resolutions of the 20th July and 25th August, 1785; nor,

should he proceed to enter into a treaty upon other principles, do they conceive the United States bound under the law of nations to ratify and confirm a compact formed under powers thus unconstitutional and incompetent.

On this, the previous question was moved by the state of New-Hampshire, and seconded by the state of Pennsylvania; and on the question to agree to the previous question, the yeas and nays being required by the state of Virginia—

New Hampshire,	Mr. Livermore,	Ay.	Ay.
	Mr. Long,	Ay.	
Massachusetts,	Mr. Gorham,	Ay.	Ay.
	Mr. King,	Ay.	
Rhode Island,	Mr. Manning,	Ay.	Ay.
	Mr. Miller,	Ay.	
Connecticut,	Mr. Johnson,	Ay.	Ay.
	Mr. Sturges,	Ay.	
New York,	Mr. Lawrance,	Ay.	Ay.
	Mr. Haring,	Ay.	
	Mr. Smith,	Ay.	
New Jersey,	Mr. Cadwallader,	Ay.	Ay.
	Mr. Hornblower,	Ay.	
Pennsylvania,	Mr. Bayard,	Ay.	Ay.
	Mr. St. Clair,	Ay.	
Maryland,	Mr. Henry,	No.	No.
	Mr. Harrison,	No.	
	Mr. Ramsay,	No.	

Virginia,	Mr. Grayson,	No.	No.
	Mr. Monroe,	No.	
	Mr. Carrington,	No.	
	Mr. Lee,	No.	
North Carolina,	Mr. Bloodworth,	No.	No.
	Mr. White,	No.	
South Carolina,	Mr. Bull,	No.	No.
	Mr. Pinckney,	No.	
	Mr. Huger,	No.	
	Mr. Parker,	No.	
Georgia,	Mr. Houstoun,	No.	No.
	Mr. Few,	No.	

So it was resolved in the affirmative, and the main question was set aside.

SEPTEMBER 26, 1786.

On motion of Mr. Pinckney, seconded by Mr. Lee,

Resolved, That the commission and instructions issued to Mr. John Lamb, for the purpose of negotiating with the Barbary powers, be and they are hereby vacated and annulled; and that the secretary for foreign affairs take the necessary measures for directing Mr. Lamb immediately to repair to New York.

SEPTEMBER 28, 1786.

A motion having been made by Mr. Pinckney, seconded by Mr. Carrington, in the words following:

Whereas under the ninth of the articles of confederation the assent of nine states is necessary for the purpose of entering into treaties or alliances: And whereas

the honourable John Jay, secretary to the United States for the department of foreign affairs, was on the 20th July and 25th August, 1785, with the assent and under the authority of nine states, instructed to enter into a negotiation with don Diego de Gardoqui, encargado de negocios of his catholick majesty, upon certain principles, and under certain restrictions herein after mentioned: and whereas, on the 29th day of August last, on the report of a committee of the whole being taken into consideration, only seven states agreed that the last clause in the said instructions, namely, "and that the following be substituted in its "place—that the secretary to the United States for the "department of foreign affairs be and hereby is in-"structed, in his plan of a treaty with the encargado de "negocios of his catholick majesty, particularly to "stipulate the right of the United States to their terri-"torial bounds, and the free navigation of the Missis-"sippi from the source to the ocean, established in "their treaties with Great Britain, and that he neither "conclude or sign any treaty, compact or convention "with the said encargado de negocios, until he hath "previously communicated it to Congress and receiv-"ed their approbation," should be repealed; which repeal tending to enlarge and alter the powers of the negotiator, and leaving him at liberty to form a treaty upon other and more extensive principles than the former instructions authorized, is objected to by the states of Maryland, Virginia, North Carolina, South Carolina and Georgia, who consider the said question of a partial repeal as lost, as the powers of a negotiator on the subject of forming treaties ought not, or cannot

by repeal or otherwise be altered or enlarged by a less number than nine states, without a flagrant violation of the principles of the confederation, and a destruction of those guards it has wisely established for protecting the interests of all the members of the confederacy: And whereas, notwithstanding the said question ought to be considered as lost, and although the President only declared that a majority of the house, (meaning the said seven states) had agreed to that part of the report of the committee of the whole, but did not decide that the same was carried, and could be considered as a constitutional resolution of the house, the secretary of Congress has entered the same on their journal as a resolution of the house; which said entry is not a true account of the proceedings of Congress: the sense of Congress is required on the following question—Is the entry on the journal of the proceedings of the 29th day of August last, a true state of the said proceedings so far as they respect the assent of the said seven states to the repeal of that part of Mr. Jay's instructions beforementioned; or ought the same to be entered on the journal in the nature of a resolution, as being substantially the same as that moved and set aside by the previous question on the 31st of August? and therefore——

On this a question of order was moved contrary to the order of the 1st of the present month, viz. "That "when a question is set aside by the previous ques- "tion, it shall not be in order afterwards formally or "substantially to move the same unless there shall be "the same or as many states represented in Con- "gress." And the President having declared that the

said motion was not in order, an appeal was made from the judgment of the chair by Mr. Pinckney; and on the question, Shall the judgment of the President be reversed, the yeas and nays being required by Mr. Pinckney—

Massachusetts,	Mr. King,	No.	No.
	Mr. Dane,	No.	
Rhode Island,	Mr. Manning,	No.	No.
	Mr. Miller,	No.	
Connecticut,	Mr. Johnson,	No.	No.
	Mr. Sturges,	No.	
New York,	Mr. Haring,	No.	No.
	Mr. Smith,	No.	
New Jersey,	Mr. Cadwallader,	No.	No.
	Mr. Symmes,	Ay.	
	Mr. Hornblower,	No.	
Pennsylvania,	Mr. Pettit,	No.	No.
	Mr. St. Clair,	No.	
Maryland,	Mr. Ramsay,	No.	×
Virginia,	Mr. Carrington,	Ay.	Divided.
	Mr. Lee,	No.	
North Carolina,	Mr. Bloodworth excused at his request.		
	Mr. White,	No.	
South Carolina,	Mr. Bull,	Ay.	Ay.
	Mr. Pinckney,	Ay.	
	Mr. Parker,	Ay.	
Georgia,	Mr. Houstoun,	No.	Divided.
	Mr. Few.	Ay.	

So the question was lost.

A motion was then made by Mr. Pinckney, seconded by Mr. Carrington,

That the injunction of secrecy be taken off so far as to allow the delegates in Congress to communicate to the legislatures and executives of their several states the acts which have passed, and the questions which have been taken in Congress, respecting the negotiation between the United States and his catholick majesty.

And on the question to agree to this, the yeas and nays being required by Mr. Pinckney—

Massachusetts,	Mr. Gorham,	No.	No.
	Mr. King,	No.	
	Mr Dane,	No.	
Rhode Island,	Mr. Manning,	No.	No.
	Mr. Miller,	No.	
Connecticut,	Mr. Johnson,	No.	No.
	Mr. Sturges,	No.	
New York,	Mr. Haring,	No.	No.
	Mr. Smith,	No.	
New Jersey,	Mr. Cadwallader,	No.	No.
	Mr. Symmes,	Ay.	
	Mr. Hornblower,	No.	
Pennsylvania,	Mr. Pettit,	No.	No.
	Mr. St. Clair,	No.	
Maryland,	Mr. Ramsay,	Ay.	><
Virginia,	Mr. Monroe,	Ay.	Ay.
	Mr. Carrington,	Ay.	
	Mr. Lee,	Ay.	

North Carolina,	Mr. Bloodworth,	Ay.	Ay.
	Mr. White,	Ay.	
South Carolina,	Mr. Pinckney,	Ay.	Ay.
	Mr. Parker,	Ay.	
Georgia,	Mr. Houstoun,	No.	Divided.
	Mr. Few,	Ay.	

So the question was lost.

OCTOBER 3, 1786.

On a report of the secretary to the United States for the department of foreign affairs, to whom was referred back his report of the 4th of July, 1785, on the consular convention between France and the United States,

Resolved, That a copy of that report be transmitted to the minister plenipotentiary of the United States at Paris, in order that he may thereby become fully informed of the objections to which the convention is liable.

That a certified copy of the act of Congress of the 25th day of January, 1782, authorizing and directing the honourable doctor Franklin to conclude a consular convention, be also sent to him.

That a certified copy of the scheme of such convention, referred to in the above act of Congress, be also sent to him.

That he be instructed to communicate the said act of Congress and the said scheme to his most christian majesty, and to point out to him the instances in which the convention deviates from the said scheme.

That he be also instructed to propose to his majesty, that the said convention be so amended as perfectly to correspond with the scheme, in every part where a deviation from the same is not permitted by the said act. And further, that he represent to his majesty the desire of Congress to make the said convention *probationary*, by adding a clause for limiting its duration to eight or ten years. That he assures his majesty of the determination of Congress to observe on all occasions the highest respect for candour and good faith in all their proceedings; and that on receiving the convention so amended, and with such a clause, they will imdiately ratify it.

Resolved, That the honourable Thomas Jefferson, esquire, the minister plenipotentiary of the United States at the court of Versailles be and he is hereby authorized and directed, to conclude and sign, on the part of the United States, with the minister of his most christian majesty having equal powers, a convention for the regulation of their respective consuls, conformably to the scheme abovementioned in every respect, except where deviations from it are permitted by the said act of Congress of the 25th day of January, 1782, and with a clause limiting the duration of the said convention to any term of years not exceeding ten.

Ordered, That the secretary for foreign affairs write the following letter to Mr. Jefferson:

SIR,

I have the honour of transmiting to you herewith enclosed the following papers, viz.

No. 1. A copy of the consular convention signed by the French and American plenipotentiaries.

No. 2. A copy of the act of Congress under which the American plenipotentiary signed the same.

No. 3. A copy of the scheme of a convention mentioned and referred to in the said act.

No. 4. A copy of a report on the said convention.

No. 5. A copy of an act of Congress containing instructions and giving authorities to you on the subject of the said convention.

These papers will possess you fully of the whole business. I am persuaded that it will appear to you as it does to Congress to be a delicate one, and to require delicate management. The original scheme of the convention is far from being unexceptionable, but a former Congress having agreed to it, it would be improper now to recede, and therefore Congress are content to ratify a convention made conformable to that scheme and to their act of the 25th day of January, 1782; provided a clause limiting its duration be added. It will be proper therefore to press on the court *only* such objections to the convention as arise from its departure from the scheme. On making an accurate comparison, such departure will appear manifest to his majesty; and there is reason to expect from his candour, that he will readily consent to remove the objections occasioned by it.

As it certainly is wise to try the merits of institutions entirely new, by actual experience, before nations adopt them forever, the propriety of rendering this convention probationary in the first instance is unquestionable. Congress cannot therefore presume that his

most christian majesty will object to a clause for limiting its duration. The design of this convention being for mutual and reciprocal benefit and convenience, it would be doing injustice to his majesty to suppose that he would wish to provide for its existing longer than it should prove useful and satisfactory. If, after the experience of a few years, it should be found to answer the purposes intended by it, both parties will have sufficient inducements to renew it, either in its present form, or with such alterations and amendments as time, experience and other circumstances may indicate.

The Scheme of a Convention between his Most Christian Majesty and the United States of North America, for defining and regulating the Functions and Privileges of Consuls, Vice Consuls, Agents and Commissaries.

The most christian king and the United States of North America, having by the 29th article of the treaty of amity and commerce concluded between them, granted mutually the liberty of having each in the ports of the other consuls, vice consuls, agents and commissaries, and being willing in consequence thereof to determine and fix in a reciprocal and permanent manner the functions and prerogatives of the said consuls, vice consuls, agents and commissaries respectively, have agreed as follows:

ARTICLE I.

It shall be the duty of the consuls of his most christian majesty to present their commissions, in the first

instance, to the United States in Congress assembled, by whom an act shall be made recognising them as such. This act shall be delivered by the consuls to the supreme executive power of the state or states to which they may be sent. Two copies of the exequatur, that is, a publick notification of the quality of the consuls, shall thereupon issue from the supreme executive power, without fees or perquisites of office ; one to be retained by the consuls, the other to be published in one or more gazettes. This being done, the pre-eminences, authority and privileges stipulated in this convention, shall be allowed to them in all places, before all tribunals, and by all persons.

ARTICLE II.

The consuls of his most christian majesty and of the United States may appoint any number of vice consuls within their respective departments. Upon the notification of their appointment, by the consuls, to the supreme executive power of the state to which they may be sent, the exequatur shall be applied for and delivered by the several states to them in the same manner as to the consuls, and thereupon all the pre-eminences, authority and privileges, stipulated in this convention in favour of vice consuls, shall be allowed in all places, before all tribunals, and by all persons.

ARTICLE III.

Consuls and vice consuls shall be subjects or citizens of the power appointing them, and interdicted

from all traffick or commerce for their own or another's benefit.

ARTICLE IV.

Consuls may also appoint any number of agents within their departments, who may be of their own nation or not, at pleasure. They shall receive a commission from the consul appointing. They shall not assume any pre-eminence, authority or privilege herein granted to consuls or vice consuls, nor exact any fees or reward under any pretence whatever. But they shall confine themselves wholly to the assisting of merchants, mariners and vessels, and giving information respecting them to the nearest consul or vice consul.

ARTICLE V.

There may be attached to the consulate, at the will of the consuls within their departments, any number of persons. Neither the papers nor houses of consuls or vice consuls shall be searched. Consuls and vice consuls shall enjoy full and entire immunities for their persons, and be exempt from personal service, publick offices, finding quarters for soldiers, militia duty, watch, ward, guardianship, attorneyship, committeeship, and from all duties, taxes and imposts whatsoever, on moveable property; but shall be liable in respect of real and landed property in the same manner as the subjects or citizens of the country. The arms of his most christian majesty, or of the United States, as the

case may be, shall be placed on the outer door of their house; and being so placed, shall entitle the house to the exemptions aforesaid. But no asylum shall be thereby obtained for malefactors or criminals, who shall be delivered up immediately on demand. The same privileges and immunities as those granted in this fifth article to consuls and vice consuls, shall be granted to persons attached to the consulate and living under the same roof with the consuls or vice consuls; provided approbation shall be given of their number and appointment by the supreme executive power of the state to which they may belong.

ARTICLE VI.

Consuls, and vice consuls in places where there are no consuls, may have a chapel in their houses for the celebration of divine service, according to their religious profession. And his most christian majesty and the United States shall cause particular care to be taken that no obstacle or hindrance be thrown in the way of the funeral obsequies or ceremonies observed towards the deceased of either nation.

ARTICLE VII.

In all cases in which it may be necessary that the consuls or vice consuls should perform any juridical or official act, the publick bodies, or the persons in publick authority who shall require such act, shall either inform them thereof in writing, or send a military or civil officer with a verbal message respecting it: and

the consuls or vice consuls shall, on their part, readily and bona fide do whatsoever may be demanded of them on these occasions.

ARTICLE VIII.

The consuls and vice consuls respectively may establish a chancery as a depositary of the consular acts and deliberations, of effects left by the dead or saved from shipwreck, of testaments, obligations, contracts, and all other acts and things done by or between people of their nation. They may appoint the officers of the chancery, administer to them an oath of office, entrust to them the keeping of the seal, and the right of affixing the same to commissions, judgments, and other consular acts; and empower them to discharge the functions of notaries and registers.

ARTICLE IX.

The consuls and vice consuls respectively shall have the exclusive right of receiving in their chancery, or on board of vessels of their nation, all the declarations and other acts which the captains, masters, seamen, passengers and merchants of their nation shall think proper to make or lodge therein; and last wills and testaments, and copies of any acts duly authenticated by the consuls or vice consuls, and under the seal of their consulate, shall receive full faith and credit in all courts of justice as well in France as in the United States. They shall also have the exclusive right of inventorying the effects of those of their na-

tion who may die within their consulate, liquidating their accounts, and selling their moveable property. They shall call to their assistance in this business two merchants of their own nation, and of their own choice, and cause to be deposited in the chancery the effects and papers of the deceased of their own nation, without being interrupted therein by any officer, military, judicial, or of the police. But neither the consuls nor vice consuls shall deliver the effects of the deceased, or the produce of the sales, over to the heir or lawful successor, or his representative or attorney, until all the debts which the deceased shall have contracted by judgment, act or bill, shall be discharged: the signature or hand writing and genuineness thereof being first certified by two merchants of the same nation with the deceased, and of reputation. In all other cases payment of no debt shall be made, unless the creditor shall first enter into a bond, with one sufficient surety at least, who is a resident on the spot, for the return of all moneys unduly received, as well the principal as interests and costs. The surety shall not be bound beyond one year in time of peace, and two years in time of war. If, however, within those terms, the creditor shall call upon the lawful representative or successor to the property of the deceased, by a proper legal process, and prove his title to the money so received, the surety shall stand discharged.

ARTICLE X.

The consuls and vice consuls respectively shall receive the declarations, consulats, or other consular

acts of all captains and masters of their respective nations, for damages received at sea by leakage, or the throwing of goods overboard. And all consulats, or other consular acts made by them in foreign ports for accidents during the voyage, shall be lodged in the chancery aforesaid. If a subject of France and a citizen of the United States be jointly interested in the cargo, the damage shall be settled by the tribunals of the country, not by the consuls or vice consuls. But where subjects or citizens of their own nation are alone interested, the consul or vice consul shall then choose experienced persons of their respective nations to settle the same.

ARTICLE XI.

In every case of a wreck, the nearest consul or vice consul may exercise his discretion in saving the vessel wrecked, with her cargo and appurtenances, and in storing and securing what is saved; and may also take an inventory thereof. In this business no officers of the customs, of justice, of the police, or naval officer, shall interfere, but upon application made to them for their assistance, in which case they shall exert themselves in the most effectual manner. To prevent all clashing of jurisdictions in case of shipwreck, it is agreed, that where there shall be no consul or vice consul, or they may be more distant from the place of the accident than a judge of the country having authority in such cases, this judge shall immediately proceed to the exercise of his authority according to law; but shall retire upon the

coming of a consul or vice consul, into whose hands he shall put the whole business, rendering an account of his transactions, and receiving from the consul or vice consul reimburesment for all expenses. Whatsoever is saved shall be lodged in the nearest customhouse or naval office, or where there is no customhouse or naval office, in the nearest place of security, with an inventory prepared by the consul or vice consul, or in their absence by the judge of the country as aforesaid. Upon the order of the nearest consul or vice consul, or without any fees or perquisites for storage when lodged in publick stores, the owner may reclaim the property so saved in person, or by attorney; and may either re-export the same free from all duties of exportation, or sell it in the country, if goods of such a quality be not prohibited. In this latter case of a sale of unprohibited goods, there shall be an abatement of the duties on importation, in proportion to the damages sustained by the shipwreck, to be determined by the account taken by the consul, vice consul or judge of the country, or any other competent officer at the time of the accident.

ARTICLE XII.

The consuls and vice consuls shall have on board of the vessels of their respective nations, all power and jurisdiction in matters of a civil nature. They shall have the power of causing the laws, regulations and ordinances of their respective nations concerning navigation to be observed on board of their said vessels. For this purpose they shall freely, and without any

molestation or hindrance from any officer or other person, visit the said vessels. They may cause to be arrested and sequestered every vessel carrying the flag of their respective nations, and even send them back to France, or the United States, as the case may be, as well as arrest any captain, master, seaman or passenger of their respective nations. They may cause to be arrested and detained in the country, sailors and deserters of their respective nations, or cause them to be transported therefrom. It shall be sufficient evidence of the sailors and deserters belonging to their respective nations, if their names appear in the register of the vessels, or the roll of their crew. Proof being thus made concerning sailors and deserters, all tribunals, judges and officers whatsoever, shall be interdicted and disabled from taking cognizance in any manner of complaints exhibited by such sailors or deserters. But they shall be delivered up to an order signed by the consuls or vice consuls, without being detained, engaged or withdrawn in any manner. That these powers vested in consuls and vice consuls may be completely executed, all persons in authority shall assist them; and upon a simple requisition made by the consuls or vice consuls in writing, shall cause to be kept in prison, at the disposal and cost of the consuls or vice consuls, the sailors and deserters so arrested, until an opportunity shall be presented of sending them out of the country.

ARTICLE XIII.

All offences committed in France by a citizen of the United States, against a subject of his most christian majesty, shall be inquired into and punished according to the laws of France; and those committed in any one of the United States by a subject of his most christian majesty, against a citizen of the United States, shall be inquired into and punished according to the laws of such state. But offences committed in France by a citizen of the United States, against a citizen of the United States, or committed in any one of the United States, by a subject of his most christian majesty, against a subject of his most christian majesty, shall be subject to the jurisdiction of the consuls and vice consuls of France, or of the United States, as the case may be.

ARTICLE XIV.

All differences and disputes between the subjects of his most christian majesty in the United States, or between the citizens of the United States in France, and all differences and disputes concerning commerce between the subjects of his most christian majesty, one party being resident in France or elsewhere, and another in the United States, or between the citizens of the United States, one party being resident in the United States or elsewhere, and another in France, shall be heard, tried and decided on by the consuls or vice consuls of their respective nations, either by re-

ferring the same to arbitration, or by making a decree summarily, and without costs. No officer, civil or military, shall intermeddle or interpose herein in any respect. Appeals shall be carried to such courts as have been or may be appointed by his most christian majesty, and the United States, respectively. No disputes or differences, between a subject of his most christian majesty and a citizen of the United States, shall be determined or taken up in any manner by the consuls or vice consuls, but shall be decided by the courts of the country in which the defendant shall be found.

ARTICLE XV.

The advantages to commerce having caused the erection of certain tribunals in France, and particular forms for the speedy determination of commercial matters, the merchants of the United States shall enjoy the benefits of those establishments in France; and the United States in Congress assembled will recommend to the legislatures of the several states to establish equal advantages in the speedy decision of causes in favour of French merchants in matters of the same nature.

ARTICLE XVI.

The subjects of his most christian majesty and the citizens of the United States shall be exempt from all personal services in the place of their residence, either in France or the United States, as the case may be.

Whensoever any person in France, or the United States, as the case may be, shall claim any privilege or exemption, as a subject of his most christian majesty, or of the United States, before any judge, tribunal or officer whatsoever, a certificate of the consul or vice consul of the district, containing his name, surname, and the place of his residence, and the affidavit of the person claiming such privilege or exemption, that he is a subject of his most christian majesty, or of the United States, as the case may be, shall be sufficient evidence thereof, unless the contrary shall manifestly appear.

ARTICLE XVII.

Conformably to the third and fourth articles of the treaty of amity and commerce between his most christian majesty and the United States, if any other nation, by virtue of any convention whatsoever, shall receive greater indulgence, either in France or in the United States, with regard to consular powers, privileges or authority, the consuls, vice consuls, agents and commissaries of France, and of the United States, as the case may be, shall participate therein.

For the act of Congress of Jan. 25, 1782, see preceding volume, p. 66.

Convention between his Most Christian Majesty and the thirteen United States of North America, for the purpose of determining and fixing the Functions and Prerogatives of their respective Consuls, Vice Consuls, Agents and Commissaries.

His majesty the most christian king, and the thirteen United States of North America, having by the twenty-

ninth article of the treaty of amity and commerce concluded between them, mutually granted the liberty of having in their respective states and ports, consuls, vice consuls, agents and commissaries, and being willing in consequence thereof, to determine and fix in a reciprocal and permanent manner the functions and prerogatives of the said consuls, vice consuls, agents and commissaries, his most christian majesty has nominated the sieur Charles Gravier, count of Vergennes, baron of Welferding, &c. counsellor of the king in all his councils, commander of his orders, head of the royal council of finances, counsellor of the state of the sword, minister and secretary of state, and of his commands and finances; and the United States, the sieur Benjamin Franklin, their minister plenipotentiary to his most christian majesty; who, after having communicated to each other their respective full powers, agreed upon what follows:

ARTICLE 1.

The consuls and vice consuls nominated by his most christian majesty and the United States, shall be bound to present their commissions on their arrival in the respective states, according to the form which shall be there established. There shall be delivered to them, without any charges, the exequatur necessary for the exercise of their functions; and on the exhibition they shall make of the said exequatur, the governours, commanders, heads of justice, publick bodies, tribunals and other officers having authority in the ports and

places of their consulates, shall cause them to enjoy as soon as possible, and without difficulty, the pre-eminences, authority and privileges reciprocally granted, without exacting from the said consuls and vice consuls any duty, under any pretext whatever.

ARTICLE II.

The respective consuls shall have power to establish vice consuls in the different ports and places of their departments, where necessity shall require. There shall be delivered to them likewise the exequatur necessary to the exercise of their functions in the form pointed out by the preceding article; and on the exhibition which they shall make of the said exequatur, they shall be admitted and acknowledged in the terms and according to the powers, authority and privileges stipulated by the first, fourth, and fifth articles of the present convention.

ARTICLE III.

The respective consuls and vice consuls may establish agents in the different ports and places of their departments, where necessity shall require. These agents may be chosen among the merchants, either national or foreign, and furnished with a commission from one of the said consuls. It shall be their business, respectively, to render to their respective merchants, navigators and vessels, all possible service, and to inform the nearest consul or vice consul of the

wants of the said merchants, navigators and vessels, without the said agents otherwise participating in the immunities, rights and privileges attributed to the consuls or vice consuls, and without power to exact from the said merchants any duty or emolument whatever under any pretext whatsoever.

ARTICLE IV.

The consuls and vice consuls, the officers of the consulate, and in general all persons attached to the consular function, shall enjoy respectively a full and entire immunity for their person, their papers and their houses. The list of the said persons shall be approved and inspected by the executive power of the place of their residence.

They shall be exempt from all personal service and publick offices, from soldiers' billets, militia watch-guard, guardianship and trusteeship, as well as from all duties, taxes, impositions and charges whatsoever, except the real estates of which they may be proprietors, which shall be subject to the taxes imposed on the estates of all other individuals.

They shall place over the outward door of their house the arms of their sovereign, without that this mark of distinction shall give to the said house the right of asylum for any malefactor or criminal, so that in case it should happen that any malefactor or criminal takes refuge there, he shall be instantly delivered up on the first requisition and without difficulty.

ARTICLE V.

Generally in all cases whatever, which concern the police or administration of justice, where it may be necessary to have a juridical declaration from the said consuls and vice consuls respectively, the governours, commandants, chief justice, publick bodies, tribunals, or other officers whatever of their respective residence there, having authority, shall be bound to inform them of it, by writing to them, or sending to them a military or civil officer to let them know, either the object which is proposed, or the necessity there is for going to them to demand from them this declaration; and the said consuls and vice consuls shall be bound on their part to comply faithfully with what shall be desired of them on these occasions.

ARTICLE VI.

The consuls and vice consuls respectively may establish a chancery, where shall be deposited the consular acts and deliberations, all effects left by deceased persons, or saved from shipwreck, as well as testaments, obligations, contracts, and in general all the acts and proceedings done between, or by persons of their nation.

They may in consequence appoint for the business of the said chancery capable persons, receive them, administer an oath to them, give to them the keeping of the seal, and the right of sealing commissions, judgments, and other acts of the consulate, as well as

there to discharge the functions of notaries and registers.

ARTICLE VII.

The consuls and vice consuls respectively shall have the exclusive right of receiving in their chancery, or on board of vessels, the declarations and all the other acts which the captains, masters, seamen, passengers and merchants of their nation would make there, even their testaments, and other dispositions of last will; and the copies of the said acts duly authenticated by the said consuls or vice consuls, and under the seal of their consulate, shall receive faith in law in all the tribunals of France and the United States.

They shall have also, and exclusively, the right to inventory, liquidate, and proceed to the sale of the moveable effects of the estates left by subjects of their nation, who shall die within the extent of their consulate. They shall proceed therein with the assistance of two merchants of their said nation, of their own choosing; and shall deposit in their chancery, the effects and papers of the said estates; and no officer, military or civil, or of the police of the country, shall trouble them or interfere therein, in any manner whatsoever: But the said consuls and vice consuls shall not deliver up the same and their product to the lawful heirs, or their attorneys, until they shall have discharged all the debts which the deceased shall have contracted in the country, by judgment, by acts, or by notes, the writing and signing of which shall be known and certified by two principal merchants of the nation of

the said deceased; and in all other cases the payments of debts cannot be ordered but on the creditors giving sufficient and local security to repay the sums unduly received, principal, interest, and cost; which securities however shall remain duly discharged after a year in time of peace, and two years in time of war, if the demand in discharge cannot be formed before these delays, against the heirs which shall present themselves.

ARTICLE VIII.

The respective consuls and vice consuls shall receive the declarations, "consulats" and other consular acts, from all captains and masters of their respective nations on account of average losses sustained at sea by leakage or throwing merchandise overboard; and these captains and masters shall leave in the chancery of the said consuls and vice consuls, the "consulats," and other consular acts which they may have had made in other ports on account of the accidents which may have happened to them on their voyage. If a subject of his most christian majesty and a citizen of the United States are interested in the said cargo, the average shall be fixed by the tribunals of the country, and not by the consuls or vice consuls; and the tribunals shall admit the acts and declarations, if any should have been passed before the said consuls and vice consuls; but when only the subjects of their own nation, or foreigners, shall be interested, the respective consuls or vice consuls, and in case of their absence or distance, their agents furnished with their commission,

shall officially nominate skilful persons of their said nation to regulate the damages and averages.

ARTICLE IX.

In case by storms or other accidents, French ships or vessels shall run ashore on the coasts of the United States, and the ships and vessels of the United States shall run ashore on the coasts of France, the consul or vice consul nearest to the place of shipwreck shall do whatever he may judge proper, as well for the purpose of saving the said ship or vessel, its cargo and appurtenances, as for the storage and security of the effects and merchandise saved. He may take an inventory, without any officers military, of the customhouse, justices, or the police of the country interfering, otherwise than to facilitate to the consuls, vice consuls, captain and crew of the vessel shipwrecked or run ashore, all the assistance and favour which they shall ask, either for the celerity and security of the salvage and effects saved, or to prevent all disturbances.

To prevent even any kind of dispute and discussion in the said cases of shipwreck, it has been agreed, that where no consul or vice consul shall be found to attend to the salvage, or that the residence of the said consul or vice consul (he not being at the place of shipwreck) shall be further distant from the said place than that of the competent territorial judge, the latter shall immediately there proceed therein with all the celerity, safety and precautions prescribed by the respective laws; but the said territorial judge shall retire on the coming of the consul or vice consul, and shall re-

sign to him the procedures by him done, the expenses of which the consul or vice consul shall cause to be reimbursed to him.

The merchandise and effects saved shall be deposited in the customhouse or other nearest place of safety, with the inventory of them, which shall be made by the consul or vice consul, or, in their absence, by the judge, who shall have had cognizance thereof; and the said merchandises and effects shall be afterwards delivered, after levying therefrom the costs, and without form of process to the proprietors, who, being furnished with a replevy from the nearest consul or vice consul, shall reclaim them by themselves, or by their attorneys, either for the purpose of re-exporting the merchandises, and in that case they shall pay no kind of duties of exportation, or for the purpose of selling them in the country, if they are not prohibited; and in this latter case, the said merchandises being averaged, there shall be granted them an abatement of the entrance duties proportioned to the damage sustained, which shall be ascertained by the verbal process formed at the time of the shipwreck, or of the vessels running ashore.

ARTICLE X.

The consuls and vice consuls shall have on board of the vessels of their respective nations, full power and jurisdiction in matters civil. They shall cause to be executed the respective laws, ordinances and rules concerning navigation on board the said vessels; and

for this purpose they shall go there without being interrupted by any officer or other person whatsoever.

They may cause to be arrested every vessel carrying the flag of their respective nations; they may sequester them, and even send them back respectively, from the United States to France, or from France to the United States; they may cause to be arrested, without difficulty, every captain, master, sailor or passenger of their said respective nations.

They may cause to be arrested, or detained in the country, the sailors and deserters of their respective nations, or send them back, or transport them out of the country.

It shall be a sufficient proof that the sailors and deserters belong to one of the respective nations, that their names be written in the ship's register, or inserted in the roll of the crew.

One and the other of these proofs concerning sailors and deserters being thus given, no tribunals, judges and officers whatsoever, shall in any manner whatever take cognizance of the complaints which the said sailors and deserters may make, but they shall on the contrary be delivered up on an order signed by the consul or vice consul, without its being in any ones power in any manner to detain, engage or withdraw them. And to attain to the complete execution of the arrangements contained in this article, all persons having authority shall be bound to assist the said consuls or vice consuls, and on a simple requisition signed by them, they shall cause to be detained and guarded in prison at the disposal and expense of the said consuls and vice consuls, the said sailors and deserters until

they shall have an opportunity to send them out of the country.

ARTICLE XI.

In cases where the respective subjects shall have committed any crime, they shall be amenable to the judges of the country.

ARTICLE XII.

All differences and suits between the subjects of his most christian majesty settled in the United States, or between the citizens and subjects of the United States settled in France, and all differences and suits concerning commerce, between the subjects of his most christian majesty and one of the parties residing in France or elsewhere, and the other in the United States, or between the citizens and subjects of the United States, one of the parties residing in the United States or elsewhere, and the other in France, shall be determined by the respective consuls, either by a reference to arbitration, or by a summary judgment, and without costs.

No officer civil or military, shall interfere or take any part whatever in the affair. Appeals shall be carried before the tribunals of France or the United States, to whom it may appertain to take cognizance thereof. The consuls or vice consuls shall not take cognizance of disputes or differences, which shall arise betwixt a subject of his most christian majesty and a citizen of the United States, but the said disputes shall be

brought before the tribunals to which the defendant shall be amenable.

ARTICLE XIII.

The general utility of commerce having caused to be established in France tribunals and particular forms to accelerate the decision of commercial affairs, the merchants of the United States shall enjoy the benefit of these establishments in France; and the Congress of the United States shall recommend to the legislatures of the different states to provide equivalent advantages in favour of the French merchants, for the prompt despatch and decision of affairs of the same nature.

ARTICLE XIV.

The subjects of his most christian majesty and those of the United States, who shall prove that they belong to the body of their respective nations by the certificate of the consul or vice consul of the district, mentioning their names, surnames and place of their settlement, as inscribed in the registers of the consulate, shall not lose, for any cause whatever, in the respective domains and states, the quality of subjects of the country of which they originally were, conformably to the eleventh article of the treaty of amity and commerce, of the 6th February, 1778, of which the present article shall serve as an interpretation in case of necessity; and the said subjects respectively shall enjoy in consequence exemption from all personal service in the place of their settlement.

ARTICLE XV.

If any other nation acquires, by virtue of any convention whatever, either in France or the United States, a treatment more favourable with respect to the consular pre-eminences, powers, authority and privileges, the consuls, vice consuls and agents of his most christian majesty, or the United States reciprocally, shall participate therein, agreeable to the terms stipulated by the second, third and fourth articles of the treaty of amity and commerce, concluded between his most christian majesty and the United States.

ARTICLE XVI.

The ratification of the present convention shall be given in proper form, and exchanged on both sides, within the space of six months, or sooner if possible.

In faith whereof, we the underwritten ministers plenipotentiary of his most christian majesty and the United States of North America, have signed the present convention, and have thereto affixed the seal of our arms. Done at Versailles, the twenty-ninth of July, one thousand seven hundred and eighty-four.

(Signed)

[L. S.] GRAVIER DE VERGENNES,
[L. S.] B. FRANKLIN.

Faithfully translated from the original, by

JOHN PINTARD.

Office for Foreign Affairs, July 4, 1785.

The secretary of the United States for the department of foreign affairs, to whom was referred a copy of the convention respecting French and American consuls, reports,

That the convention, of which the abovementioned is a copy, having been formally executed by French and American plenipotentiaries, nothing is wanting to perfect that compact but the ratifications specified in the sixteenth article.

The only question therefore that remains to be decided, is, whether Congress ought to ratify this convention. To decide this question properly, it appears necessary, 1. To recur to the powers and instructions given to their minister on the subject, and inquire whether he has pursued them essentially; and 2. Whether in case of deviations, they are of such a nature as to justify a refusal to ratify. It is to be observed, that on the 25th January, 1782, Congress "re-"solved, that the minister plenipotentiary of the "United States at the court of Versailles be and he "is hereby authorized and instructed, to enter into a "convention with his most christian majesty, on the "part of the United States, for the establishment of "consular powers and privileges *according* to the "scheme hereunto subjoined, unless it shall be deemed "by his most christian majesty more expedient that the "same should be executed in the United States.

"That the said minister plenipotentiary use his dis-"cretion as to the words or arrangement of the con-

"vention, confining himself to the matter thereof in "*all respects*, except as to so much of the *sixth* arti- "cle, as relates to the erection of a chapel; taking "care that reciprocal provision be made for the re- "cognition of the consuls and vice consuls of the "United States, and for the admission of persons at- "tached to the consulate to the privileges stipulated in "the fifth article, in a manner most conducive to expe- "dition, and freest from difficulty."

This is the only instruction, as well as the only authority given on the subject, to the American minister, that your secretary finds.

SCHEME.	CONVENTION.
Title.	Title.
Convention between his most christian majesty and the United States of North America, for defining and regulating the functions and privileges of consuls, vice consuls, agents and commissaries.	Convention between his most christian majesty and the thirteen United States of North America, for the purpose of determining and fixing the functions and prerogatives of their respective consuls, vice consuls, agents and commissaries.

The style of the confederacy being "the United "States of America," the scheme and the convention are both erroneous, so far as they both add the word North. But the title of the convention departs essentially from that of the scheme, inasmuch as it limits

the compact to the thirteen United States of America, and consequently excludes from it all such other states as might before the ratification of it, or in future, be created by, or becomes parties to, the confederacy: whereas the words in the title of the scheme, United States of North America, would, if used, have comprehended them all.

SCHEME.

First Article.

It shall be the duty of the consuls of his most christian majesty to present their commissions, in the first instance, to the United States in Congress assembled, by whom an act shall be made, recognising them as such. This act shall be delivered by the consuls to the supreme executive power of the state or states to which they may be sent. Two copies of the exequatur, that is, a publick notification of the quality of the consuls, shall thereupon issue from the supreme executive power, without fees or perquisites of of-

CONVENTION.

First Article.

The consuls and vice consuls nominated by his most christian majesty and the United States, shall be bound to present their commissions on their arrival in the respective states according to the form which shall be there established. There shall be delivered to them, without any charges, the exequatur necessary for the exercise of their functions; and on the exhibition they shall make of the said exequatur, the governours, &c. having authority in the ports and places of their consulates, shall cause them to enjoy as soon as

fice, one to be retained by the consuls, the other to be published in one or more gazettes. This being done, the pre-eminences, &c. shall be allowed to them, &c.

possible, and without difficulty, the pre-eminences, &c.

The scheme expressly directs, that their commissions shall in the first instance be presented to Congress; but the convention, by omitting this, seems to intend something else. It indeed directs that they shall present their commission on their arrival in the respective states according to the form "qui s'y trou-" vera etabli" which shall be there found established; but whether established by the state or by Congress is undecided.

The second articles in both appear to be alike in substance.

SCHEME.	CONVENTION.
Third Article.	
Consuls and vice consuls shall be subjects or citizens of the power appointing them, and interdicted from all traffick or commerce for their own or another's benefit.	

This article is wholly omitted in the convention; and that omission is an essential, though perhaps not in itself a very important deviation from the scheme.

The fourth article in the scheme, and the third in the convention, respecting agents, differ essentially only in this, that the former has these words, "nor "exact any fees or reward under any pretence what-"ever," whereas the latter seems to limit that prohibition by these words, "and without power to exact from "the *said merchants*, any duty or emolument whatever, "under any pretext whatsoever."

The fifth article in the scheme, and the fourth in the convention have no material difference.

SCHEME.	CONVENTION.
Sixth Article.	
Consuls, and vice consuls in places where there are no consuls, may have a chapel in their houses, for the celebration of divine service according to their religious profession. And his most christian majesty and the United States shall cause particular care to be taken that no obstacle or hindrance be thrown in the way of the funeral obsequies or ceremonies observed towards the deceased of either nation.	

This article is omitted in the convention. By the instruction given to the minister, that matter seems to have been left to his discretion. The omission, however, appears important to your secretary from this consideration, that although the catholick religion may be freely and publickly professed and exercised in the United States, yet the protestant religion has no legal toleration in France. This omission therefore is a departure from the line of reciprocity.

The seventh article in the scheme and the fifth in the convention are much alike.

The eighth article in the scheme and the sixth in the convention are similar.

The ninth article in the scheme and the seventh in the convention also correspond.

SCHEME. Extract from tenth article, on average.	CONVENTION. Extract from eighth article, on average.
"If a subject of France and a citizen of the United States be jointly interested in the cargo, the damage shall be settled by the tribunals of the country, not by the consuls or vice consuls. But where subjects, citizens of their own nation, are alone interested, the consul or vice consul shall then choose	"If a subject of his most christian majesty and a citizen of the United States are interested in the said cargo, the average shall be fixed by the tribunals of the country, and not by the consuls or vice consuls; and the tribunals shall admit the acts and declarations, if any should have been passed

experienced persons of their respective nations to settle the same."

before the said consuls and vice consuls. But when only the subjects of their own nation or foreigners shall be interested, the respective consuls or vice consuls, and in case of their absence or distance, *their agents* furnished with their commission, shall officially nominate skilful persons of their said nation to regulate the damages and averages."

The convention here appears to differ materially from the scheme in *three* respects. 1. As it provides for the admission in evidence, by our tribunals, of acts and declarations passed before consuls and vice consuls, respecting the matter in controversy, and consequently opens a door to *ex parte* affidavits. 2. The scheme confines the jurisdiction of consuls and vice consuls to cases where none but their own people are concerned; whereas the convention extends it to *foreigners*. 3. The scheme authorizes none but consuls and vice consuls to appoint persons to settle the damages in question; but the convention makes an ulterior provision, and authorizes their agents ex officio to do it in certain cases.

The eleventh article in the scheme and the ninth in the convention are not materially different.

SCHEME.

Extract from twelfth article.

"They" (consuls and vice consuls) "may cause to be arrested and sequestered, every vessel carrying the flag of their respective nations. They may cause to be arrested and detained in the country, sailors and deserters of their respective nations, or cause them to be transported therefrom."

CONVENTION.

Extract from tenth article.

"They may cause to be arrested every vessel carrying the flag of their respective nations. They may sequester them, *and even send them back* respectively, from the United States to France, or from France to the United States. They may cause to be arrested without difficulty, every captain, master, sailor or passenger of their said respective nations. They may cause to be arrested and detained in the country, the sailors and deserters of their respective nations, or send them back, or transport them out of the country."

These articles differ in these respects. The scheme does not authorize the consuls *to send vessels back*, but the convention does. The scheme does not authorize them to arrest *captains and masters* of vessels, but the convention does. The scheme does not authorize them to arrest *passengers*, but the convention does.

SCHEME.
Thirteenth article.

All offences committed in France by a citizen of the United States against a subject of his most christian majesty, shall be inquired into and punished according to the laws of France; those committed in any one of the United States, by a subject of his most christian majesty, against a citizen of the United States, shall be inquired into and punished according to the laws of such state. But offences committed in France by a citizen of the United States against a citizen of the United States, or committed in any one of the United States by a subject of his most christian majesty, against a subject of his most christian majesty, shall be subject to the jurisdiction of the consuls and vice consuls of

CONVENTION.
Eleventh article.

In cases where the respective subjects shall have committed any crime, they shall be amenable to the judges of the country.

France, or the United States, as the case may be.

These two articles differ only in this, that the one in the scheme gives cognizance of certain offences to consuls and vice consuls; but the one in the convention gives that cognizance to the judges of the country.

The fourteenth article in the scheme, and the twelfth in the convention, differ only in this, that the former refers certain offences, disputes and differences to the jurisdiction of the consuls and vice consuls; whereas the latter is silent as to offences, and omits making any mention of them.

The fifteenth article in the scheme and the thirteenth in the convention are alike.

SCHEME.	CONVENTION.
Sixteenth Article.	Fourteenth Article.
The subjects of his most christian majesty and the citizens of the United States shall be exempt from all personal services in the place of their residence, either in France, or the United States, as the case may be. Whensoever any person in France, or the United States, as the case may be, shall claim any privilege or ex-	The subjects of his most christian majesty and those of the United States, who shall prove that they belong to the body of their respective nations, by the certificate of the consul or vice consul of the district, mentioning their names, surnames and place of their settlement, as inscribed in the registers of the consulate, shall not

emption of a subject of his most christian majesty or of the United States, before any judge, tribunal or officer whatsoever, a certificate of the consul or vice consul of the district, containing his name, surname, and the place of his residence, and the affidavit of the person claiming such privilege or exemption, that he is a subject of his most christian majesty or of the United States, as the case may be, shall be sufficient evidence thereof, unless the contrary shall manifestly appear.

lose for any cause whatever, in the respective domains and states, the quality of subjects of the country of which they originally were, conformably to the eleventh article of the treaty of amity and commerce, of the sixth February, 1778, of which the present article shall serve as an interpretation in case of necessity; and the said subjects respectively shall enjoy in consequence, exemption from all personal service in the place of their settlement.

These two articles vary from each other essentially. First, in that the certificate of the consul is by the convention made the sole and conclusive proof of nationality, whereas the scheme requires also the affidavit of the party, and makes that joint evidence conclusive only in cases where the contrary shall not manifestly appear. Secondly, in that the convention declares that persons having such certificates shall not lose, for any cause whatever, the quality of subjects of the country of which they originally were; whereas the scheme, by not giving such operation to those certificates, leaves such persons within the reach of natura-

lization. Thirdly, in that the convention makes this article auxiliary to the sixth article of the treaty, by declaring that it shall serve as an interpretation in case of necessity; whereas the scheme does not constitute any connexion between this article and the treaty.

There is no difference between the seventeenth article in the scheme and the fifteenth in the convention, except that the former refers only to the third and fourth articles of the treaty; whereas the latter refers to the second, third, and fourth.

The convention contains an article, viz. the sixteenth, which provides for the exchange of ratifications; but there is no such article in the scheme.

It appeared proper to your secretary thus particularly to state the principal variances between the scheme and the convention, that Congress may the more easily judge how far they correspond. The deviations in question, though different in degrees of importance, yet seem to be alike in this, that they depart from the matter of the scheme, and not merely from the verbiage or arrangement of it. As sovereigns treat and act with each other by their ministers, it becomes essential that the acts of those ministers should not be obligatory until after they are ratified; it being reasonable that the sovereigns should have an opportunity of judging whether their powers have not been exceeded, and whether their instructions have been pursued. A refusal to ratify can therefore be warranted only by one or other of these principles, viz. Either that their ministers have exceeded the powers delegated by their commission, or departed from the instructions given them to limit and regulate the exer-

cise and use of those powers, which are commonly expressed in very general terms.

Hence it becomes important, that the sovereign refusing to ratify should be in capacity to show clearly what the powers and instructions given were, and also that the treaty or convention in question is not conformable thereto.

In the present case there can be no difficulty, because all the power and authority delegated to the American minister, rest entirely on the resolution of the 25th of January, 1782, which in a few words so blends his authority and his instructions that he could not communicate to the French minister the one without the other.

Where an open and general commission is given, accompanied by private and particular instructions, the one may be shown and the other reserved. And though a departure from such instructions is good cause to refuse a ratification, yet more difficulties attend such cases than the present, because the other party being ignorant of the instructions, and relying on the full powers, treats in full confidence and expectation that the proceedings will be ratified. But as the French ministers in this instance knew exactly how far the American minister could go, and saw plainly that he was not to depart from the matter of the scheme which accompanied and was referred to in his powers and instructions, they could in case of essential deviations, only expect a ratification de gratia, and not de jure, and consequently can have no reason to be dissatisfied in case it should be declined.

Thus much appeared necessary to observe, in order to show that Congress have a right to refuse the ratification in question; but whether it would be politick and expedient to do it, are questions which must be entirely referred to the wisdom of Congress. Your secretary however, in order fully to comply with what he conceived to have been the intention of Congress in referring the convention to him, will now proceed to state the several objections to which in his opinion it is liable.

The convention appears well calculated to answer several purposes; but the most important of them are such, as America has no interest in promoting. They are these:

1. To provide against infractions of the French and American laws of trade.

2. To prevent the people of one country from migrating to the other.

3. To establish in each others country an influential corps of officers, under one chief, to promote mercantile and political views.

The first of these objects is clearly evinced by the 10th article.

The second of these objects, though less explicitly, is still sufficiently evident from the 14th article. The third of these objects as it respects mercantile views, is apparent from the general tenor of the convention; and it appears plain to your secretary, that a minister near Congress, consuls so placed as to include every part of the country in one consulate or other, vice consuls in the principal ports, and agents in the less important ones, constitute a corps, so coherent, so ca-

pable of acting jointly and secretly, and so ready to obey the orders of their chief, that it cannot fail of being influential in two very important political respects ; first, in acquiring and communicating intelligence ; and secondly, in disseminating and impressing such advices, sentiments and opinions, of men or measures, as it may be deemed expedient to diffuse and encourage.

These being the three great purposes which the convention is calculated to answer; the next question which naturally occurs is, whether the United States have any such purposes to answer by establishing such a corps in France.

As to the first, we have no laws for the regulation of our commerce with France, or any of her dominions; and consequently we want no provisions or guards against the infraction of such laws.

As to the second, we have not the most distant reason to apprehend or fear that our people will leave us, and migrate either to the kingdom of France or to any of its territories; and consequently every restriction or guard against it, must be superfluous and useless.

As to the third, France being a country in whose government the people do not participate, where nothing can be printed without previous license, or said without being known, and if disliked followed with inconveniences, such a corps would there be very inefficient for political purposes. Where the people are perfectly unimportant, every measure to influence their opinions must be equally so. For political purposes, therefore, we do not want any such corps in France.

As to assisting our merchants, and such other matters as properly belong to consuls, they would answer all those purposes just as well without these extraordinary powers as with them.

Hence it is clear to your secretary, that the three great purposes which the convention is calculated to answer are such as the United States have no interest in promoting. Whether France has any such purposes to answer in the United States, and how far this convention may facilitate the pursuit of them, are questions which the discernment of Congress renders it unnecessary for your secretary to discuss.

Your secretary also considers this convention as greatly deficient in reciprocity, inasmuch as by it we are to admit French consuls into all our ports and places without exception; whereas no provision is made for the admission of ours into any of the ports, places and dominions of his most christian majesty, except the kingdom of France only. He also thinks that the omission of the article securing to consuls the right of worshipping in their own way, in chapels, in their houses, is a deviation from reciprocity, especially as that liberty is not only permitted but established here.

But independent of these general circumstances and considerations, your secretary thinks the convention is liable to several strong and particular objections.

When these states assumed a place among the nations of the earth, they agreed upon and published to the world the style and title by which they were to be known and called; and your secretary does not conceive that other nations are more at liberty to alter that style, than the United States are to alter the title

of his most christian, catholick, or any other majesty in Europe. He therefore thinks that no act should be ratified by Congress, until every errour of this kind is corrected. Though these matters are very unimportant in themselves, yet they become so as precedent; one little liberty unchecked often smoothing the way for a greater. The convention directs the consuls, on their arrival in the respective states, to present their commissions according to the forms which shall be there found established. Although the word respective here used, relates to the two countries, and not to the individual states of which our confederacy is composed, yet it still is doubtful whether the form alluded to is to be established by Congress, or the state to which they may be sent, and at which they may arrive. The like remarks apply to the case of vice consuls mentioned in the second article.

In countries where the laws alone govern, it should, in the opinion of your secretary, be an invariable maxim not to permit any civil power to be exercised in it, but by the citizens of the country, legally and constitutionally authorized thereto; and that as few persons as possible should live exempt, in any respect, from the jurisdiction of the laws. In his opinion, therefore, none but the immediate representatives of sovereigns ought to have such exemptions. A consul is not of that description. According to the law of nations, ambassadors must be received; but that law does not extend to consuls, and therefore every nation may admit them on their own terms. It is not easy to assign a good reason for granting them a full and entire immunity for their persons, papers, houses and servants,

other than such as the free citizens of the country enjoy. As they are protected by the laws, they should be subject to them.

But the convention goes much further. It grants this immunity not only to consuls, and also to vice consuls, but also to all their different officers, and in general to all persons attached to the consulate. Various abuses, difficult to detect and still more difficult to correct, would naturally attend such extensive exemptions from the process and jurisdiction of our laws, which can only proceed in one open plain direct path, without the aid of those detours and expedients well known and daily practised in absolute governments.

The fifth article, respecting calling upon them for evidence, seems to be an unnecessary departure from our laws. Why should consuls and vice consuls be called upon to give evidence in a manner less formal and less coercive than the first and highest officers of our government are?

The sixth and seventh articles, establishing consular and *vice consular chanceries*, create an imperium in imperio, which in several respects must clash with the internal policy of these states, and with which it is not clear that Congress can authorize any persons to interfere; such as,

1. Their officers shall discharge the functions of notaries. If by notaries be intended such as are known in this country, they are publick officers who can only be appointed in the manner prescribed by the governments of the different states.

2. All effects left by deceased persons (of their nation) are to be deposited there, and they are to have

the *exclusive* right to inventory, liquidate and sell the moveable effects, &c. so left; so that with respect to these matters, not only the executors of the deceased are to be excluded, but our judge of probates is to lose his jurisdiction; and yet consular copies of such wills and acts, though unknown to our laws, are to be admitted as evidence in our courts.

3. If a French merchant, having many goods in possession and many debts to pay, should die, his creditors, according to this system, are to have no other dependence for payment but the integrity of the consul or vice consul, who alone can take possession of his goods. No action can be brought against these officers, nor any process touch any thing in their houses; so that our courts are so far to lose their jurisdiction, and American creditors in effect their right of action.

4. Notes given by Frenchmen dying here are put on another footing from notes given by our citizens, with respect to evidence. For the convention demands that the writing and signing of them shall be known and certified by two principal merchants of his nation; which very materially alters our law on that subject.

From these and other circumstances it appears, that this convention will make a strong line of separation between French and American inhabitants in this country.

The tenth article needs no comment. It gives to consuls as complete jurisdiction over French vessels in our harbours, as any of the king's officers could exercise over them in the harbours of France. One circumstance, however, is very striking, and merits

much attention, viz. their power to arrest passengers, which doubtless will be the case whenever passengers attempt to come here in a manner and for purposes not consistent with the ordinances against emigration. And the power to arrest also the captains and masters, is doubtless intended to punish neglects of those ordinances, and to render them very circumspect in their conduct relative to passengers and cargoes.

How far the power of arresting and re-exporting sailors and deserters may operate on emigrants is not difficult to foresee, as the consuls are to be the only judges, and our courts are excluded from hearing the complaints of any persons whom the consuls may describe by those appellations.

The fourteenth article makes the certificate of a consul conclusive proof of a man's being a Frenchman, and declares that he who shall make such proof shall not lose for any cause whatever the quality of subject. That the manifestation of so important a fact should depend wholly on such a certificate; that no counter proof should be offered and prevail, is really to make the consular chancery a court of record, (and that not only for judicial acts, but also for facts) against whose records, and even the copies of them, there can be no averment. This does not comport with the genius and spirit either of our constitutions or our laws, both of which secure to every inhabitant and citizen the inestimable privilege of offering in our tribunals every species of legal evidence that may tend to elucidate the merits of the cause before them. But this is not the only objection to which this article is liable; one much more interesting is obvious.

Where such certificates appear, the person named in them is not to lose for any cause whatever the quality of subject, so that even legal naturalization is not to operate as a cause.

That this is the true construction of that clause is evident from its expressly referring to the eleventh article of the treaty, and declaring that it shall serve as an interpretation thereof. Let us recur to that article.

After stating the privileges which persons of the two nations shall enjoy in each others country, it thus proceeds: "But it is at the same time agreed, that its "contents shall not affect the laws made or that may "be made hereafter in France against emigrations, "which shall remain in all their force and vigour. "And the United States on their part, or any of them, "shall be at liberty to enact such laws relative to that "matter, as to them shall seem proper." Now let us collect into one point of view the different parts of the system, from their dispersed situation in the treaty and in the articles of this convention, and see how it will operate.

The king has a right to make what laws he may think proper respecting navigation and emigration. Suppose a law directing that every passenger shall on his arrival in America immediately report himself to the consul or vice consul nearest the place of his arrival, to the end that his name and description be entered in the consular registers.

The tenth article of the convention declares that they shall cause to be executed the respective laws, ordinances and rules concerning navigation, on board

the said vessels, and that they may cause every passenger to be arrested.

Hence it will happen that every passenger will be noted and described in their books before such passenger can obtain naturalization; and if he should afterwards obtain it, the fourteenth article renders it avoidable by ordaining that "they who shall prove "that they belong to the body of their respective na- "tions by the certificate of the consul or vice consul "of the district, mentioning their names, surnames and "place of their settlement as inscribed in the registers "of the consulate, shall not lose, for any cause what- "ever, in the respective states and domains, the qua- "lity of subjects of the country of which they originally "were;" and the same article proceeds to declare, what is really not the fact, that this is conformable to the eleventh article of the treaty; and as if conscious that the said article does not admit of such construction, it adds, that it shall serve as an interpretation of it, that is, that it shall be so construed in future. That the eleventh article does no more than declare the right of the king to make what laws he pleases against emigration; but there is nothing in it which says, or seems to say, that his subjects, producing the beforementioned certificates, shall not for any cause whatever lose their quality in our country.

Although the true policy of America does not require, but on the contrary militates against such conventions; and although your secretary is of opinion, that the convention as it now stands ought not to be ratified, yet as Congress have proceeded so far in the present instance, he thinks that instructions should be sent to

their minister at Versailles, to state their objections to the present form; and to assure the king of the readiness of Congress to ratify a convention made agreeable to the scheme beforementioned; provided an article be added to limit its duration to eight or ten years, in order that practice and experience may enable them to judge more accurately of its merits than can ever be done of mere theoretical establishments, however apparently expedient.

All which is submitted to the wisdom of Congress.

JOHN JAY.

Office for Foreign Affairs, October 9, 1786.

SIR,

I take the earliest opportunity of informing your excellency that Mr. Remsen, on reading the printed scheme of a consular convention, observed that it did not exactly correspond with the copy in this office. This circumstance led him to compare it with the original scheme in the secretary's office; and on making that comparison he discovered important omissions in the twelfth article of the copy belonging to this office. As the discovery of this omission rescues the tenth article of the convention from the charge of essential deviations from the twelfth in the scheme, and as it shows the latter to be equally liable with the former to the objections made against it in my report, I think it my duty to enclose a note of this variation between the original scheme and the copy in this office, that Congress may have an opportunity of making any further

order that they may think proper on the subject. I confess that the scheme now appears to me more ineligible than I before thought it, though I am still of opinion that the only prudent way of getting over this unpleasant business is to conclude a convention similar even to the scheme as it now appears to be, and render its inconveniences temporary by an article limiting its duration.

With great respect and esteem, I have the honour to be, &c.

J. JAY.

His Excellency the President of Congress.

Note of the difference between the twelfth article of the scheme of the convention entered in the year 1782, on the journal belonging to the office for foreign affairs, and the said article in the original scheme recorded in the secret journal in the secretary's office.

Twelfth Article.	Twelfth Article.
" They (consuls and vice consuls) may cause to be arrested and sequestered, every vessel carrying the flag of their respective nations, *and even send them back to France or the United States, as the case may be ; as well as arrest any captain, master,*	" They (consuls and vice consuls) may cause to be arrested and sequestered, every vessel carrying the flag of their respective nations. They may cause to be arrested and detained in the country, sailors and deserters of their respective nations,

seaman or passenger of their respective nations. They may cause to be arrested and detained in the country, sailors and deserters of their respective nations, or cause them to be transported therefrom."

or cause them to be transported therefrom."

The *scored** lines show where the copy which Mr. Jay used, when he made his report on the consular convention, deviates from the original.

N. B. There were in that copy several other variations from the original, to the number of twenty in the whole, all of which are now corrected ; but as none of them, except the abovementioned, materially affects Mr. Jay's report, it is not thought necessary to enumerate them in this note.

The above letter and note were read in Congress, October 10, 1786 : And thereupon,

Ordered, That the said letter be referred back to the secretary for foreign affairs, to take order.

Office for Foreign Affairs, October 11, 1786.

SIR,

I have the honour of transmitting to your excellency herewith enclosed, a letter of the 9th instant, and a translation of it, which I received yesterday in the afternoon, from the charge des affaires of France ; and

* Italick.

request the orders of Congress respecting the request contained in it.

With great respect and esteem, I have the honour to be your excellency's most obedient and humble servant,

(Signed) JOHN JAY.

His Excellency the President of Congress.

New York, October 9, 1786.

SIR,

I take the liberty to request of you a communication of the resolution which Congress has taken concerning the consular convention. As that resolution has been taken in consequence of a note which I have had the honour to send to the United States, by order of his majesty, it appears proper that I transmit to my court the determination which that assembly has been pleased to take. I shall be much obliged to you for this new proof of your goodness.

I am, with respect, sir, your very humble and obedient servant,

(Signed) OTTO.

The Honourable John Jay, Minister for Foreign Affairs.

Ordered, That the above letter be referred to the secretary for foreign affairs to report.

Office for Foreign Affairs, October 12, 1786.

The secretary of the United States for the department of foreign affairs, to whom was referred a letter to him of the 6th instant, from the charge des affaires

of France, requesting that the resolution of Congress, concerning the consular convention, may be communicated to him, reports,

That in his opinion it would not be expedient to establish a precedent of communicating to a foreign minister here, any acts of Congress, committing business or giving instructions to their minister at his court; for as such a practice would doubtless be inconvenient in some instances, it had better be avoided in *all*; lest if Congress should sometimes do it, and sometimes not, they would become exposed to the necessity either of explaining the reasons of such diversity, or to the risk of giving offence by apparent partiality.

Your secretary therefore thinks it advisable that he be ordered to inform the charge des affaires of France, that as their communications to his most christian majesty will be officially made by their minister resident at his court, they do not think it necessary to accept his polite offer of conveying any they direct respecting the consular convention.

All which is submitted to the wisdom of Congress.

JOHN JAY.

Ordered, That the above report be referred to the secretary for foreign affairs to take order.

Office for Foreign Affairs, October 13, 1786.

The secretary of the United States for the department of foreign affairs, to whom was referred a letter of the 4th March last, from the honourable John Adams, esquire, together with the papers that accompanied it, reports,

That as the subject of these papers and of this report appears to your secretary in a very important point of light, he thinks they should be so incorporated as that the record of the latter in this office may always exhibit an entire and complete view of the whole business. He therefore reports,

That on the 8th day of December, 1785, Mr. Adams, agreeable to his instructions of the 7th day of March, 1785, presented to his Britannick majesty's secretary of state a memorial, dated the 30th day of the preceding month, in the following words:

A Memorial.

The subscriber, minister plenipotentiary from the United States of America, has the honour to represent to the ministry of his Britannick majesty, that by the seventh article of the preliminary treaty of peace between his majesty and the United States of America, signed at Paris, on the thirtieth day of November, one thousand seven hundred and eighty-two, confirmed by the definitive treaty of peace, signed at Paris, on the third day of September, one thousand seven hundred and eighty-three, it was stipulated, that his Britannick majesty should, with all convenient speed, and without causing any destruction, or carrying away any negroes or other property of the American inhabitants, withdraw all his armies, garrisons and fleets from the said United States, and from every port, place and harbour within the same, leaving in all fortifications the American artillery that may be therein.

That, although a period of three years has elapsed since the signature of the preliminary treaty, and of more than two years since that of the definitive treaty,

the posts of Oswegatchy, Oswego, Niagara, Presque-isle, Sandusky, Detroit, Michillimackinac, with others not necessary to be particularly enumerated, and a considerable territory round each of them, all within the incontestable limits of the said United States, are still held by British garrisons, to the loss and injury of the said United States.

The subscriber, therefore, in the name and behalf of the said United States, and in obedience to their express commands, has the honour to require of his Britannick majesty's ministry, that all his majesty's armies and garrisons be forthwith withdrawn from the said United States, from all and every of the posts and fortresses herein before enumerated, and from every other port, place and harbour, within the territory of the said United States, according to the true intention of the treaties aforesaid. Done at Westminster, this thirtieth day of November, one thousand seven hundred and eighty-five. John Adams.

That the answer received by Mr. Adams to the said memorial is contained in the following letter from the said secretary of state to Mr. Adams, viz.

St. James's, February 28, 1786.

Sir, In answer to the memorial you did me the honour to deliver to me on the 8th December, I have to observe to you, sir, that it is his majesty's fixed determination, upon the present as well as every other occasion, to act in perfect conformity to the strictest principles of justice and good faith.

The seventh article both of the provisional and of the definitive treaties between his majesty and the United

States, clearly stipulates the withdrawing with all convenient speed, his majesty's armies, garrisons and fleets, from the said United States, and from every port, place and harbour within the same; and no doubt can possibly arise respecting either the letter or spirit of such an engagement.

The fourth article of the same treaties as clearly stipulates, that creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money, of all bona fide debts heretofore contracted.

The little attention paid to the fulfilling this engagement on the part of the subjects of the United States in general, and the direct breach of it in many particular instances, have already reduced many of the king's subjects to the utmost degree of difficulty and distress; nor have their applications for redress, to those whose situations in America naturally pointed them out as the guardians of publick faith, been as yet successful in obtaining them that justice to which, on every principle of law as well as of humanity, they were clearly and indisputably entitled.

The engagements entered into by treaty ought to be mutual and equally binding on the respective contracting parties. It would therefore be the height of folly as well as injustice, to suppose one party alone obliged to a strict observance of the publick faith, while the other might remain free to deviate from its own engagements, as often as convenience might render such deviation necessary, though at the expense of its own national credit and importance.

I flatter myself, however, sir, that justice will speedily be done to British creditors; and I can assure you, sir, that whenever America shall manifest a real determination to fulfil her part of the treaty, Great Britain will not hesitate to prove her sincerity to co-operate in whatever points depend upon her for carrying every article of it into real and complete effect.

The enclosed paper contains a state of the grievances complained of by merchants and other British subjects having estates, property and debts due to them in the several states of America. I am, sir, your most obedient, humble servant, Carmarthen.

John Adams, Esq. &c. &c. &c.

That the state of grievances mentioned in the said letter, and referred to in it, is as follows:

State of the grievances complained of by merchants and other British subjects, having estates, property and debts due to them in the several states of America.

Massachusetts Bay.

By an act of this state, passed the 9th of November, 1784, the justices of the court of judicature were directed severally to suspend rendering judgment for any interest that might have accrued between the 19th of April and the 20th January, 1783, on debts due to British subjects. This act is peculiarly severe on the British subject, against whom it is expressly pointed. The demand of interest is called inequitable and unjust, and the legislature of this state conceive it to be repugnant to the spirit and intention of the fourth article

of the treaty of peace, which they say provides only for bona fide debts. The act states that the legislature have taken measures to obtain the sense of Congress upon this article; but the committee have not heard that any opinion has been given thereon.

New York.

By an act passed in this state, the 12th of July, 1782, British creditors are precluded from the claim of interest on all debts contracted before the 1st of January, 1776, until after the 1st of January, 1783; and executions for the principal of those debts are forbidden to be levied, till the expiration of three years after the evacuation of New York. By another act passed the 17th of March, 1783, and confirmed by others in 1784 and 1785, those Americans who had abandoned their possessions in New York upon its capture by the British troops, and resided without the lines during the war, are enabled to bring actions of trespass for rents, &c., during their absence, against the persons who had occupied their premises, whether under the authority or permission of the British commander or otherwise, and who, by this act, are precluded from pleading any military order whatsoever, in justification of their occupancy; it also authorizes the sequestration of the estates of British subjects lying in that country, for their conduct during the war. By virtue of this law, actions for claims to an enormous amount, were immediately instituted against British subjects, who, relying implicitly on the treaty of peace and the faith of nations, were encouraged to remain in New York upon its evacuation, for the purposes of collecting their

debts and settling or extending their commercial affairs; and in cases where those who had occupied the premises were not to be found, the demands were made on the lodger, the late servant, or the agent of those occupiers. These suits have been prosecuted with the utmost severity, and being determinable by juries of interested men, as well as conformable to the above-mentioned statute, it is no wonder that verdicts of exorbitant rents and damages have in every instance been found against the defendants.

Pennsylvania.

This state has violated the fourth article of the definitive treaty, by passing a law soon after the peace to restrain the recovery of the old debts for a given period.

The British merchants were in consequence thereof set at defiance; and few instances exist of payment having been made for any debts contracted before the war. This law was limited to September, 1784; but whether it has been further extended by any new act, or whether it expired at that time, the committee are not certain. This law, operating with the fears and prejudices of some of the inhabitants, has produced effects of the most mischievous consequence to the British merchants; for not only a uniform opposition has been made against the payment of interest, but the lawyers, dreading the resentment of some of the most violent among their countrymen, have refused to engage in the recovery of these unpopular demands; and the committee are well assured that not one action for

the payment of an old British debt has been prosecuted in this state.

Virginia, Maryland and North Carolina.

The merchants interested in the trade to these states, having already by their chairman presented their case and memorial to the right honourable the marquis of Carmarthen, respecting their situation as to the debts due to them previous to the late war, and the hardships they experience from the infraction of the 4th article of the definitive treaty, the committee beg leave to refer to the annexed extract.

South Carolina.

After Congress had ratified the definitive treaty of peace, they recommended a due observance thereof to the different states, and the assembly of South Carolina resolved to carry the said treaty into execution, sincerely, strictly and completely; but regardless of those resolutions, and in contravention to the treaty, the legislature passed an ordinance the 26th of March, 1784, declaring among other things, that no suit should be instituted for any debt contracted by any citizen of the United States previous to the 26th of February, 1782, until the 1st of January, 1785, when the interest *only* which had accrued since January, 1780, might be recovered, and on the 1st of January, 1786, one fourth part of the principal and all such other interest as might be then due. On the 1st of January, 1787, one other fourth part of the principal and the interest which shall have accrued. On the first of January, 1788, one other fourth part of the principal

and the interest accrued thereon. And on the 1st of January, 1789, the balance which may be then due.

By this ordinance, debtors are judicially protected from suits brought at the instance of their creditors, who are chiefly British merchants; and so great and general are the obstructions to the recovery of debts, that in several districts remote from Charleston, the courts have been prevented by tumultuous and riotous proceedings, from determining actions for debt. By the delay thus occasioned, the property of the British merchant becomes every day more precarious; his credit and fortune are materially injured; and in many cases totally destroyed.

To prevent the operation of the act beforementioned, in cases where it empowers creditors to sue for one fourth part of the principal of a debt on the 1st of January, 1786, an act was passed by this legislature the 12th of October, 1785, entitled "An act for regulating sales under execution, and for other purposes therein mentioned;" whereby a debtor, during any period of a suit that has been or may be commenced, is allowed to tender land in payment of his debt; such land to be appraised by three citizens of the county or parish where it lies, who are authorized to value it as if sold at a credit of six months: the creditor is then obliged to take the land at three fourths of the value at which it is so appraised. By the same law it is further enacted, that no creditor shall bring any suit for debt, until he make application in writing from himself to his debtor for payment. This act seems calculated to cut off all possibility of non resident British creditors commencing a suit. The proviso

that he must write himself to his debtor, is considered as an insurmountable obstacle in his proceedings; as he must meet with innumerable difficulties in proving the delivery of his letter to a debtor, who may reside in the interiour part of the state. Where this difficulty does not exist, the creditor must either drop his action or run the risk of having property of little or no value, bordering perhaps on the Indian country, forced upon him, which, if sold for cash, would not produce one tenth part of its appraised value. Another instance of the violation of the fourth article of the treaty, which provides that "creditors on either side shall "meet with no lawful impediment to the recovery of "the full value in sterling money of all bona fide debts "heretofore contracted," arises from the payment of debts to British subjects, in depreciated paper currency, which was forced into circulation during the war, and made a legal tender, according to its nominal value, by the then government. The depreciation became so great, that debtors by such unjust tenders did not pay one shilling in the pound; and where they plead those payments or tenders in bar to the demands of their British creditors, such creditors are proportionally defrauded of their property.

The fifth article of the treaty stipulates, that persons of certain descriptions shall have free liberty to go to any part of the United States, to obtain the restitution of their rights and properties. This article has been grossly violated in this state; for though such persons were permitted to go thither, yet the purposes for which they went were frustrated by a suspension of the course of justice; for they were compelled to

depart by a publick notification from the governour, and to abandon their property, under the aggravating reflection of having been at considerable expense both of time and money, in a delusive pursuit, and having also experienced great personal insult and abuse during their continuance in the state.

Several British merchants who had sold goods in Charleston, while in possession of his majesty's troops, were obliged to accept houses and lands in payment of debts. After its evacuation, an act of confiscation was enforced, which, though not passed till the 26th of February, 1782, had retrospect to the 4th of July, 1776. Houses and lands then the property of persons in purview of the act, but which had undergone many changes and actually belonged to British merchants when the act was passed, were sold by the commissioners of confiscated estates in June, 1784, without any regard to their claims, founded upon the fifth and sixth articles of the treaty of peace. The property was sold at a credit of five years, and state indents were to be received in payment. In case the state of Carolina should comply with the fifth article of the treaty, it has been suggested that the claimants will be paid in state indents, which are already depreciated fifty per cent. and it is apprehended may at the end of five years be so reduced in value, that creditors of this description will not receive one shilling in the pound of their demands.

It is also necessary to observe, that the decisions of the board of police, established under the king's government in Charleston, however equitable, have been set aside *since the peace*. British subjects have been

deprived of their property, purchased under its process, and cast in excessive damages and costs, for no other cause than having brought actions therein for the recovery of debts, even where the defendant had confessed judgment, and when both plaintiff and defendant were British subjects.

Georgia.

Laws and regulations similar to those which have passed in South Carolina exist in this state, with degrees of peculiar and manifest aggravation; the judges from the bench having declared, that no suit shall be proceeded on if brought by a British subject; while on the contrary, they allow British subjects to be sued by their creditors.

According to the present regulations in both countries—

An American is protected in his property by our laws. All our courts are, and always have been, open to him for the recovery of any debt, as well interest as principal.

A British merchant is in some states positively, in others virtually, prohibited by their legislatures from recovering his property, which is a violation of the fourth article of the treaty of peace. In several states, judgment for interest for more than seven years is actually suspended by law, whilst in others, although the courts appear to be open, the lawyers

are afraid to prosecute for British debts.

Those creditors are deemed fortunate who, upon giving up all claim to interest (which is equal to thirty, and in some instances to forty per cent.) can obtain security for the payment of the principal.

Extract of the case and memorial of the merchants of London, Bristol, Liverpool, Whitehaven and Glasgow, trading to Virginia, Maryland and North Carolina, previous to the year 1776, addressed to the right honourable the marquis of Carmarthen, his majesty's principal secretary of state for the foreign department.

That in the year 1777, the British agents and factors as well as many of the merchants were compelled to quit the late American colonies, leaving behind them in real estates, debts and other property, equal in value to more than three millions sterling, belonging to the merchants of London, Bristol, Liverpool and Glasgow. That in the course of the war, much of the property of the British merchants was confiscated and sold; and debts owing to persons who had no share in the contest, were paid into the publick treasuries of Virginia and Maryland by legislative authority.

That the provisional articles of peace between Great Britain and the United States of America having been agreed upon the 30th November, 1782, and finally adjusted on the 3d of March, 1783, it was set-

tled and agreed by the fourth article of the said treaty, "That creditors on either side should meet with "no lawful impediment in the recovery of the full "value in sterling money, of all bona fide debts "heretofore contracted." And the fifth article having stipulated, that the Congress should earnestly recommend to the legislatures of the respective states, to provide for the restitution of all estates, rights and properties which had been confiscated, belonging to real British subjects; and the sixth article having provided, that there should be no future confiscations, many of the British merchants, anxiously solicitous to recover the property so long withheld from them, and upon which the support of their families in many instances depended, sent out agents and factors, particularly to Virginia and Maryland, not doubting but they should experience every facility in the collection of the wreck of their fortunes: but upon the 2d of July, 1783, an edict was published by the governour of Virginia, ordering all the British agents and factors who had arrived in that state forthwith to depart the same. That in this situation, these agents and factors were not only compelled to retire on board of British ships, then trading to the country, but had the mortification to find, that the real estates of many of the British merchants had been confiscated and sold, and the produce of the same applied to the publick services of government. That in the month of October, 1783, the legislative body of Virginia removed the restriction; in November following, the British merchants and agents were permitted to return; and they have remained unmolested since that period; but no per-

mission whatsoever has been given, either to merchants acting for themselves, or to agents or factors acting for employers in Great Britain, to recover any part of the debts or property left in the country in the year 1775. That in the month of October, 1784, the legislative body of Virginia met; and in the course of the sessions a bill was brought in, the preamble of which runs thus: "Whereas by the fourth article of the definitive treaty "of peace between the United States of America and "Great Britain, ratified by the king of Britain on the "12th day of May last, it was stipulated, among other "things, by the said contracting parties, that creditors "on either side shall meet with no lawful impediment "in the recovery of the full value, in sterling money, "of all bona fide debts heretofore contracted; *and* "*good faith requires, that the said treaty shall be carried* "*into execution according to the true intent and meaning* "*thereof.*" The bill then proceeds to several enacting clauses, the substance of which are as follows:—1. That the restraints disabling British subjects from prosecuting for the recovery of debts shall be removed by the repeal of an ordinance made since the 19th April, 1775. 2. That all British debts due before the date of the provisional articles shall be discharged by seven equal payments, the first of which shall become due the 1st of April, 1786. 3. That the other payments shall fall due on the same day in the six years then next following respectively. 4. That no interest shall be allowed to British subjects for any intermediate time between the 19th day of April, 1775, and the 3d day of March, 1783, the same time to be considered as one day in law. 5. That no settlement made

by bonds or other specialties, with interest included. at any time since that period, shall preclude a citizen of America from the benefit of this act, so far as repects interest and payment by instalments to British creditors. 6. That no execution shall issue against any debtor for more than the proportion of the instalment due for the time being; but such execution may issue annually for the proportion then due, until the whole shall be discharged. 7. That the citizens of Virginia who have been resident there on the 19th April, 1775, and have remained ever since, although the partners of British merchants, shall not, so far as they are concerned, be subject to the restrictions of this act, but shall enjoy the privileges of other citizens. This bill passed the assembly and senate of Virginia, but from the want of some forms, it was delayed if not lost.

That whether the same system of explaining and fulfilling the fourth article of the definitive treaty will be followed by other states in America, or whether the commonwealth of Virginia will finally enact this law, remains to be determined; but the peculiar hardships to which British merchants are subject cannot fail to be strikingly conspicuous, when it is considered, 1. That it is now ten years since their property has been withheld from them. 2. That they are to be deprived of eight years interest, equal to forty per cent. 3. That the system of making payments by instalments to run out to such lengths of time, must subject them to great loss, from the natural causes of deaths, bankruptcy and removals, which must be expected to happen in the course of eight years. 4. That during this

period no security can be demanded, neither can a debtor be restrained by law from wasting or removing property. 5. That with all these disadvantages, that of removing the last payment to the year 1792, and of consequence obliging the British merchants to keep factors and agents at a great expense in the country to collect these debts, cannot fail to prove a great additional burden to your memorialists. 6. That no provision is proposed to be made for the real property confiscated and sold for publick services, nor for money paid into the treasuries of Virginia and Maryland.

That these and other hardships are distressing in the extreme to the British merchants. And when it is considered, that in addition to all this some of them have had the mortification to have their property confiscated and sold since the ratification of the treaty of peace, they conceive the grounds of their distress to be so peculiarly striking as to claim the assistance and interposition of the British government in procuring a compliance with the treaty of peace entered into with the American states.

List of money paid into the treasury in Maryland, on account of British debts.

1781.	Currency, Exchange 66 2-3.	New Emissions.
February,	2,000	50
March,	79,517 13 11¼	1,988 9 1½
April,	2,840	71
May,	13,386 8 6	335 13 6
June,	46,830 6 11	1,170 15 7
	£144,574 9 4¼	3,615 18 2½

N. B. The above sum of 144,574 is equal to 86,744 sterling.

List of money paid into the treasury in Virginia, on account of British debts.

	Paper Currency.	Depreciation.	Value in Specie.
Paid from the 2d March, 1778, to the last of Oct. both days inclusive,	27,022 17 9	5	5,404 11 6¾
Do. last of October to the last of December, 1778,	14,684 13	6	2,447 9 8
December ditto March, 1779,	7,086 11 2	10	708 13 1¼
March do. April,	23,435 3	16	1,464 13 11¾
April do. June,	28,911 5 3	20	1,445 11 3½
July,	6,533 4	21	311 2 1¼
August,	3,228 16	22	146 15 3½
September,	5,063	24	210 19 2
October,	1,475 15 6	28	52 14 1½
November,	4,315 4	36	119 17 4
December,	12,488 14 9	40	312 4 4½
January, 1780,	1,496 18 5	42	35 12 9¾
February,	11,972 0 8	45	266 0 10¾
March,	6,317 9 1	50	126 6 11¾
April and May,	119,522 15 7	60	1,992 0 11¾
	£273,554 13 7		£15,044 13 8

N. B. The above sum of £273,554 13 7, currency, is equal to £12,035 sterling.

This and the preceding sheets contain true copies of the state and lists enclosed in the marquis of Carmarthen's letter to me, dated 28th of February, 1786, in answer to the memorial of the 30th November, delivered to his lordship the 8th December, 1785, compared by John Adams.

On considering the before recited papers, these important questions present themselves:

1. Whether any individual state has a right, by acts of their own internal legislature, to explain and decide the sense and meaning in which any particular article of a national treaty shall be received and understood within the limits of that state?

2. Whether any and which of the acts enumerated in the list of grievances do violate the treaty of peace between the United States and Great Britain?

3. In case they or any of them should be found to violate it, what measures should be adopted in relation to Great Britain? And

4. What measures should be adopted in relation to the state or states which passed the exceptionable acts?

Of these in their order; and

1. Of the right of an individual state to enact in what sense a national treaty shall be understood within its particular limits.

Your secretary considers the thirteen independent sovereign states as having, by express delegation of power, formed and vested in Congress a perfect though limited sovereignty for the general and national purposes specified in the confederation. In this sovereignty

they cannot severally participate (except by their delegates) or have concurrent jurisdiction; for the ninth article of the confederation most expressly conveys to Congress the sole and *exclusive* right and power of determining on war and *peace*, and of entering into treaties and alliances, &c. &c.

When therefore a treaty is constitutionally made, ratified and published by Congress, it immediately becomes binding on the whole nation, and superadded to the laws of the land, without the intervention, consent or fiat of state legislatures. It derives its obligation from its being a compact between the sovereign of this, and the sovereign of another nation; but laws or statutes derive their force from being acts of a legislature competent to the passing of them. Hence it is clear, that treaties must be implicitly received and observed by every member of the nation; for as state legislatures are not competent to the making of such compacts or treaties, so neither are they competent, in that capacity, authoritatively to decide on or ascertain the construction and sense of them. When doubts arise respecting the construction of state laws, it is common and proper for the state legislatures by explanatory or declaratory acts to remove those doubts; but when doubts arise respecting the construction of a treaty, they are so far from being cognizable by a state legislature, that Congress itself have no authority to settle and determine them. For as the legislature only, which constitutionally passes a law, has power to revise and amend it, so the sovereigns only, who are parties to the treaty, have power by posterior articles and mutual consent to correct or explain it.

All doubts, in cases between private individuals, respecting the meaning of a treaty, like all doubts respecting the meaning of a law, are in the first instance mere judicial questions; and are to be heard and decided in the courts of justice having cognizance of the causes in which they arise, and whose duty it is to determine them according to the rules and maxims established by the laws of nations for the interpretation of treaties.

If this reasoning and these principles be right, as your secretary thinks they are, it follows of consequence that no individual state has a right by legislative acts to decide and point out the sense in which their particular citizens and courts shall understand this or that article of a treaty. A contrary doctrine would not only militate against the common and received principles and ideas relative to this subject, but would prove as ridiculous in practice, as it appears irrational in theory; for in that case, the same article of the same treaty may by law mean one thing in New Hampshire, another in New York, and neither the one nor the other in Georgia.

It would be foreign to the object of this report to inquire how far such legislative acts are valid and obligatory even within the limits of the state passing them. Much might be said on that head: certain however it is, that they cannot bind either of the contracting sovereigns, and consequently cannot bind their respective nations.

2. Whether any and which of the acts mentioned in the list of grievances do violate the treaty with Great Britain?

It is to be observed, that the violations complained of are confined to three articles of the treaty, viz. the fourth, fifth and sixth. Your secretary will therefore proceed to arrange and consider these acts in that order.

The fourth article of the treaty is in these words:

"It is agreed that the creditors on either side shall "meet with no lawful impediment to the recovery of "the full value in sterling money of all bona fide debts "heretofore contracted."

This article, in the opinion of your secretary, establishes this point, viz. that the bonafide debts theretofore contracted remained unextinguished by the war. The propriety of making this remark will appear from adverting to the distinction there is between cases where the rights of creditors survived the war, and cases where creditors, having been divested of their rights in the course of the war, are restored to them by the treaty of peace. In the former case his right remains precisely as it was; but in the latter case it *may* sometimes be *questionable* whether the treaty *restores that right* wholly, or *only in part;* and such questions are only to be decided by recurring to the article of restoration. This distinction is introduced for the purpose of casting light on the question, whether interest is or is not payable on, or comprised in, the *bona fide* debts mentioned in the article before us. For if the article considers these debts or contracts as being in their original state of extent and obligation, there can be little doubt but that when a stipulation to pay interest makes a part of the contract, every attempt to invalidate that particular part must be in op-

position to the treaty. But, on the other hand, if the article is to be considered as restoring creditors to rights they had lost in the war, then inasmuch as it provides only for the recovery of the *bona fide debts*, without making mention of the interest accrued on them, it may be a question with some, whether the right to recover the interest is so attached to the right of recovering the principal, as that a restoration of the latter necessarily implies and restores the former; for nothing being said in the article to exclude interest, the only question is, whether the revival of the principal debt does or does not operate as a revival of the interest? But this is only a secondary question, and to be asked only in case it should appear that both principal and interest were lost in the war and restored by the treaty under the denomination of *bona fide debts*, which words some construe as including both principal and interest, and others think can intend only the principal.

They who consider this article as being *restoratory*, must insist and ought to show, that the debts said to be *restored* were actually lost to the creditors in the course of the war. If that was the case, they must have been so lost either by extinction, remission or confiscation, and that either tacitly and silently by the laws of war, or expressly by national acts.

Your secretary is not informed of any laws of war among civilized nations whereby all debts before subsisting between the people of belligerent nations are immediately and silently either extinguished, remitted, or confiscated; and it would he conceives be useless to adduce the obvious reasons which induce

him to think that there neither are nor ought to be any such laws. If this be so, it follows that the fourth article cannot be considered as *restoratory* on the principle that the debts in question were lost by the silent operation of such laws.

The next inquiry then is, whether belligerent powers have a right by express acts to extinguish, remit or confiscate such debts. Your secretary thinks, that the laws of nations strictly and rigidly considered will authorize it; but that since mankind have become more enlightened, and their manners more softened and humanized, it has not been common as well for those reasons, as for others suggested by the interest of commerce and mutual intercourse, to practise such severities.

But admitting that the United States had a right to extinguish, remit or confiscate debts due from their citizens to British subjects, it still remains to be *required* whether, and in what manner, and by what acts they exercised that right? For if they did not exercise this right at all, then it will follow that these debts were neither extinguished, remitted nor confiscated, and consequently, that the article cannot be considered as *restoratory;* nothing being more clear than that restoration always implies previous deprivation.

Here a very important question presents itself, viz. Whether the state legislatures can derive a right, from the existence of war between their sovereign and a foreign one, to extinguish, remit or confiscate, by their acts, debts due from their citizens to the subjects of that foreign sovereign?

The rights to make war, to make peace, and to make treaties, appertaining *exclusively* to the national sovereign, that is, to Congress, your secretary is of opinion that the thirteen state legislatures have no more authority to exercise the powers, or pass acts of sovereignty on those points, than any thirteen individual citizens. To execute the laws, or exercise the rights of war against a national enemy, belongs only to the national sovereign, or to those to whom the national sovereign may constitutionally delegate such authority. So that whatever right each state, individually considered, may have to sequester or confiscate the property of their own proper citizens, yet with respect to the common enemy of the nation, they can separately do no act of national sovereignty; for surely a thirteenth part of a nation can with no propriety assume a power of doing national acts proper only to the national sovereign. However recent may be the date of the confederation, yet a union founded in compact, and vesting the rights of war and peace in Congress, preceded it; and your secretary is exceedingly mistaken if there ever was a period since the year 1775, to this day, when either of the then colonies, now states, were in capacity to pass state laws for sequestering or confiscating the debts or property of a national enemy. It was then, and afterwards, by virtue of national commissions, that the enemy's property on the sea was liable to be captured and confiscated; and equal authority was necessary to justify the confiscation of their property found on the land. Whatever state acts therefore may have been passed during the war, exercising rights accruing to the sovereign

from the laws of nations respecting war, they cannot, in the opinion of your secretary, be obligatory on either of the belligerent sovereigns, and consequently not on any of their respective citizens or subjects.

Your secretary would not have it inferred from these remarks, that the states have passed *general* laws for confiscating British debts due from their citizens. His design in these remarks is to obviate any arguments that might be drawn from certain other acts less general and direct, but in his opinion equally improper, such for instance as those whereby certain British subjects were declared traitors, and whereby, as a consequence of treason, the debts due to them became payable to the state to which those British subjects were declared to be traitors; for such laws, however absurd, do exist. There are also certain other laws authorizing the payment of debts due to certain individuals to be made at the state treasury in paper money, &c. &c.

The question then again recurs, Did *Congress* do any act for extinguishing, remitting or confiscating debts due from Americans to British subjects?

In an act of South Carolina, passed in their senate the 26th February, 1782, and entitled "An act for disposing of certain estates, and banishing certain persons "therein mentioned," your secretary finds the following recital, viz. "Whereas the good people of these states, "having not only suffered great losses and damages "by captures of their property on the sea by the subjects of his Britannick majesty, but by their seizing "and carrying off much property taken on the land. "In consequence of such proceedings of the British

"crown and those acting under its authority, the "honourable Congress of the United States, after due "and mature consideration, authorized the seizing and "condemnation *of all property found on the sea*, and "belonging to the subjects of Great Britain; and re- "commended to the several states, in which such sub- "jects had *property*, 'to confiscate the same for the "publick use.'"

This recommendation is not specified by its date. Your secretary has taken pains to find it in the journals of Congress, but without success; nor does the secretary of Congress recollect it. Admitting, however, that there was such a recommendation, yet he cannot think that a recommendation to confiscate *such British property* as might be in particular states, can with any propriety be construed to extend to the debts due from the people of such states to persons in Britain. Nay, the very act which recites this recommendation, and which does confiscate the property of several British subjects, makes an express exception of *debts*.

In short, your secretary does not know of any act of Congress whereby debts due from Americans to Britons were either extinguished, remitted or confiscated; and therefore concludes, that the fourth article of the treaty must be understood not as reviving or restoring those debts, but as considering them to be and remain exactly and precisely in their pristine and original state, both with respect to extent and obligation. If this conclusion be just, your secretary can perceive no ground for the singular reasons and questions that have

prevailed respecting the payment of interest claimed by British creditors in virtue of express contracts between them and their American debtors. However harsh and severe the exaction of this interest, considering the war and its effects, may be and appear, yet the treaty must be taken and fulfilled with its bitter as well as its sweets; and although we were not obliged to accept peace on those terms, yet having so accepted it, we cannot now invalidate those terms or stipulations, nor with honour or justice refuse to comply with them. Much better would it be for the United States, either severally or jointly, by their bounty to relieve those suffering and deserving individuals on whom the performance of this article may press too hard, than by reasonings and comments which neither posterity or impartial cotemporaries can think just, to permit our national reputation for probity, candour and good faith, to be tarnished.

Your secretary will conclude what he has to say on the subject of interest with a few short remarks.

It appears to him that there are only *three* cases in which interest can with justice be demanded; and that in the *first* of the three the courts of justice are not and ought not to be at liberty to refuse it, viz.

1. In all cases where interest is fairly and expressly contracted and agreed to be paid. In such cases the debtor is unquestionably bound to pay it, and ought not to be absolved or excused from it by any act of legislature. In the opinion of your secretary every legislature deviates from the reason and limits of their institution, when they assume and exercise the power

of annulling or altering *bona fide contracts* between individuals.

2. Interest may be claimed in certain cases by custom, viz. in cases where it has long been usual for merchants to expect and to allow interest on debts, after the stipulated term and time of credit and payment has expired. This custom in the ordinary course of things is reasonable, for equity demands that he who does not pay at the appointed day, should thereafter pay interest to his creditor, as well by way of compensation for the disappointment as for the use of the money. Whether the reason of this custom can apply in time of war, or whether the equity of the demand of interest in virtue of the custom, is, or is not, overbalanced by the equity of refusing it by reason of the effects of the war, are questions proper for the consideration of the jury; and your secretary sees nothing in the treaty to prevent their deciding as to them shall appear just and right.

3. Interest may be demanded, and is often given, under the idea of damages for wrongful and vexatious delays of payment. Every case of this kind must stand on its own merits; and the treaty leaves the jury at liberty to give such a verdict as their opinion of those merits may dictate.

Your secretary will now proceed to examine the acts complained of as infractions of this article. The first on the list is called an *act of Massachusetts*, passed the 9th November, 1784; but it was a resolution of the legislature, rather than a formal act. As the abridgment of it in the list of grievances may not be so satisfactory to Congress as a recital of it at large, your secretary thinks it best to report it.

Commonwealth of Massachusetts.

In Senate, November 9, 1784.

Whereas the payment of interest which might have accrued during the late war, upon debts due from the citizens of this or any of the United States prior to the commencement of the same, to real British subjects and others, commonly called absentees, would be not only inequitable and unjust, but the legislature of this commonwealth conceive repugnant to the spirit and intendment of the fourth article in the treaty of peace, which provides only for the payment of bona fide debts, and as the legislature have taken measures to obtain the sense of Congress upon the said article, so far as the same respects the payment of interest which might have accrued as aforesaid, and in the mean time judgments may be obtained in some of the courts of law within this commonwealth for interest accruing as aforesaid, contrary to the true design of the said treaty: Therefore,

Resolved, That in all actions or suits, which are or may be instituted or brought to any of the judicial courts within this commonwealth, wherein any real British subject or absentee is plaintiff or defendant, and which actions or suits by the laws thereof are sustainable therein, the justices of the same courts are hereby severally directed to suspend rendering judgment for any interest that might have accrued upon the demand contained in such actions or suits between the 19th day of April, 1775, and the 20th day of January, 1783, until the third Wednesday of the next sitting of the general court: provided always, that if in any such actions or suits the plaintiffs shall move

for, or by default have right to judgment, then, and in such case, the justices aforesaid shall cause judgment to be entered for the principal sum, which, by the laws of this commonwealth, such plaintiff shall be entitled to recover, and all such interest as accrued thereon before the said 19th day of April, and subsequent to said 20th day of January; and execution shall issue accordingly. And if Congress shall hereafter determine that the interest, which might have accrued on any bona fide debt aforesaid during the war, ought by the treaty aforesaid to be considered as part of such debt, then the said courts respectively shall proceed to enter a further judgment for the amount of all such last mentioned interest, without any new process, and issue execution for such further sum accordingly; and all attachments made or bail given upon any action instituted as aforesaid, shall be holden to respond the final judgment that may be given for the amount of such last mentioned interest.

Sent down for concurrence. Samuel Adams, Pres't. In the House of Representatives, November 10, 1784. Read and concurred. Samuel A. Otis, Speaker. Approved, John Hancock. A true copy. Attest, John Avery, jun. Secretary.

However this resolution may deviate from the treaty, and perhaps from the proper jurisdiction of the legislature, yet it bears strong marks of fairness and regard to equal justice. It states their doubts on the construction of the article. It does not assume the power of deciding those doubts. It refers that ques-

tion to Congress; and although it *suspends* judgments for interest, yet it does it impartially, and not only in cases where *British* creditors are plaintiffs, but also where they are defendants. It also provides, that if Congress should decide in favour of interest, then judgment and execution shall be given accordingly.

Your secretary is nevertheless of opinion that this resolution was an infraction of the said fourth article:

Because *state legislatures* having no cognizance of questions respecting the construction of treaties, can with no propriety suspend their operation on account of any fears or apprehensions which they may entertain of and concerning such questions:

Because, as it appertained to the courts of judicature to decide such questions, the legislature ought not to have restrained those courts from rendering such judgments as to them appeared consistent with the treaty and the law. For by restraining the courts from giving judgment for interest in cases where they would have given such judgment, unless so restrained, the legislature did certainly interpose a *lawful impediment* to the plaintiff's recovering what the courts were ready to adjudge to be his right under that article of the treaty; and their so doing was therefore a violation of it.

The next act complained of as being contrary to this article is one of *New York*, passed the 12th July, 1782, which was some months prior to the date of the *provisional articles*; so that this complaint must be ill founded, unless this act (if inconsistent with the treaty) was continued and so executed after the peace as to violate the treaty.

It is by no means accurately stated, as will appear on comparing the account given of it in the list of grievances, with the act itself, which is in the following words:

An act relative to debts due to persons within the enemy's lines, passed 12th July, 1782.

Whereas many of the inhabitants of this state, who have not remained within the enemy's power, and who were indebted to others who did so remain, are now threatened with suits, and have it not in their power to recover from those who are indebted to them and remained within the power of the enemy:

Be it therefore enacted by the people of the state of New York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That all suits and prosecutions for any debt arising on simple contract, bills single or penal, or any other obligation, mortgage, security or demand whatsoever, due by or from any person not within the enemy's power or lines, that has remained with, gone into, or has in consequence of any law of this state been sent within the enemy's power or lines, already commenced or which hereafter may be commenced, shall be stayed until the legislature shall make further provision in the premises, any law to the contrary notwithstanding.

And whereas it is also just and reasonable that provision should be made for the relief of such citizens of this state, who, having received in payment of debts due to them paper currency, which at the time of such payment was a legal tender, and which they might of right have paid in discharge of any

debts due by them, but which it was not in their power to pay to such of their creditors as have remained with, gone into, or were so sent within the enemy's lines, and which money has, since the receipt thereof, depreciated in their hands: And whereas it is impossible to apply one general rule to all the variety of cases which do or may arise:

Be it therefore enacted by the authority aforesaid, That in every suit or prosecution which shall be commenced after the legislature shall by law have declared that the necessity of staying such suits or prosecutions as aforesaid do no longer exist, by any person who may have remained with the enemy, gone unto them, sent or to be sent as aforesaid unto them, against any person who has remained without the power of the enemy, it shall and may be lawful for the court in which such suit shall be commenced or prosecuted, and the court is hereby required, on motion of the defendant or his attorney, to appoint three or five referees, at the option of the court, to try the matter in controversy; and the defendant shall, and hereby is allowed, to plead before such referees any special matter; and if it shall appear to the said referees or the major part of them, that the special matter alleged and proved by the defendant is of such a nature that in equity and good conscience abatement ought to be made from any sum or sums due by such defendant, the referees shall, by majority of voices, determine the quantum of such abatement; and having made their report and award in writing, shall return the same into court; and the court shall thereupon give judgment, and order execution to issue in favour of the plaintiff for the sum so awarded to be due to the plaintiff;

provided, that such execution shall not be levied until the expiration of three years next after the enemy shall be expelled from, or shall have abandoned the city of New York.

And be it further enacted by the authority aforesaid, That it shall and may be lawful for every defendant to pay in discharge of any debt so found due, as aforesaid, to such plaintiff as aforesaid, certificates or notes signed by any commissioner of loans of the United States, according to the value thereof, as settled by the continental scale of depreciation, or certificates for money due on loan by this state, according to the value thereof, ascertained by law.

And be it further enacted by the authority aforesaid, That it shall and may be lawful for any person now without the power of the enemy, being a debtor to any person now within the power of the enemy, at any time after the enemy shall be expelled from, or shall have abandoned the city of New York, and that the legislature shall have by law declared that such suits as aforesaid shall be no longer stayed, to cite his creditors before any court of law in this state to have a settlement, and make payment agreeable to the mode prescribed by this act; and if the creditors shall refuse to appear and come to trial, within two terms next after such citation, he shall be and hereby is declared to be barred and precluded from recovering his said debt, due or demand, or any part thereof.

Be it further enacted by the authority aforesaid, That any subject or subjects of this state, not in the power or lines of the enemy, who are indebted by simple contract, bill single or penal, or any other obliga-

tion, mortgage, security or demand whatsoever, to any person or persons, that have either remained with, gone into, or have, in consequence of any law of this state, been sent within the enemy's power or lines, for such subjects of this state, not in the power or lines of the enemy, so indebted, shall be and hereby are discharged from any interest which may have become due on such contract, bill, obligation, mortgage or securities, since the first day of January, 1776, to the first day of January which shall follow next after the conclusion of the present war ; any law, usage or custom to the contrary notwithstanding : provided, that nothing in this clause contained shall be deemed to operate as a discharge of any interest which may have accrued on any such bill, obligation, mortgage or other security, executed since the said first day of January, 1776 : provided nevertheless, that no person or persons shall be allowed the benefit of this act, unless he, she or they shall first have taken the oath of abjuration, and the oath of allegiance to this state, and shall obtain a certificate signed by two reputable and well affected freeholders of this state, one whereof shall be a judge of the inferiour court of common pleas of the county in which the person named in such certificate shall reside, certifying that he or she is well attached to the freedom and independence of the United States of America, and have taken an active and decided part therein : and provided farther, that this act shall not extend to any debt or debts, contracted or made, or hereafter to be made for the use of the state, for the payment of which the faith thereof is pledged : and also provided farther, that nothing in this act contained shall be con-

strued to extend to any person that heretofore hath been, now is, or hereafter shall be a prisoner with the enemy.

It must be obvious to those who carefully peruse this act, that it neither mentions nor respects *British creditors;* and your secretary is well informed that it never has been construed to extend to them, but on the contrary, it has universally been considered as incapable of such a construction. The complaint urged against it therefore is entirely without reason.

This circumstance shows the necessity of minutely examining the facts and complaints contained in this list of grievances.

The next in order is an act of *Pennsylvania*, said to have been passed soon after the peace, *to restrain the recovery of the old debts* for a given period. The one intended is doubtless the following:

An act for extending the provision made in the seventh section of the act entitled "An act for the re- "peal of so much of the laws of this commonwealth as "make the continental bills of credit and the bills "emitted by the resolves or acts of assemblies of the "said commonwealth a legal tender, and for other "purposes therein mentioned."

Whereas the provision made by the act entitled "An act for the repeal of so much of the laws of "this commonwealth as make the continental bills of "credit, and the bills emitted by the resolves or acts "of assemblies of said commonwealth, a legal tender" in behalf of those persons who from principles of

honour and honesty declined paying their debts with a depreciated paper currency, when they had it in their power by law so to have done, will cease on the twenty-first day of June next:

And whereas it was deemed reasonable at the time of passing the aforesaid act, that such honest debtors should not be compelled to pay their old debts till gold and silver money should become more plenty and easier to be procured: and whereas from divers causes, it hath actually become more scarce and difficult to be procured than at the time of passing the aforesaid act; and in consequence thereof great numbers of honest debtors as aforesaid will be ruined, unless some further relief be provided for them:

Be it therefore enacted, and it is hereby enacted by the representatives of the freemen of the commonwealth of Pennsylvania in general assembly met, and by the authority of the same, That no execution shall issue for the principal sum due by any contract or species of contract whatever, entered into before the first day of January, 1777, debts due to the state only excepted, until one year from and after the twenty-first day of June next ensuing, and from thence until the end of the next sitting of assembly, any thing in the said act to the contrary notwithstanding.

And whereas divers debtors, who had contracted debts which by reason of losses and misfortunes in trade they were unable at the time to pay, have, before the first day of January, 1777, assigned and made over their real estates, or such parts thereof as their creditors were willing to accept, to trustees, in trust that the same shall be sold within a reasonable time, to

pay and satisfy such debts; which said trusts have not been executed: and whereas the scarcity of gold and silver hath caused the value of lands and tenements in most parts of this state to fall vastly below the real value of the same, and if compulsory sales were to be made of such lands and tenements, it is probable they would fall short of paying the debts which they were at first supposed a sufficient security for, to the injury and oppression of both creditor and debtor:

Be it therefore enacted by the authority aforesaid, That no sales shall be made by any such trustees of any lands or tenements which were so as aforesaid assigned and made over to them before the said twenty-first day of June, 1784, and from thence until the end of the next sitting of assembly, without the consent in writing of the debtor or assignor, or his legal representatives, first had and obtained.

And be it further enacted by the authority aforesaid, That no act or statute of limitation of actions shall run, or be deemed or taken to have run, at any time between the first day of January, 1776, and the end of one year from and after the twenty-first day of June next, upon all debts and contracts made or entered into before the first day of January, 1776.

And be it further enacted by the authority aforesaid, That whenever it shall appear that any debt or duty was contracted or incurred on or before the first day of January, 1777, and any bond, obligation or other security hath been entered into for the payment thereof, since the said first day of January, the plaintiff who hath brought or shall bring any suit or suits on any such bond or obligation, executed in the manner afore-

said, may proceed to judgment in such action, and may issue his execution for the interest, damages and costs, as aforesaid; but no execution shall issue for the principal debt or sum, until one year from and after the twenty-first day of June next, as aforesaid.

And be it also further enacted by the authority aforesaid, That so much of the aforesaid act as is contrary to this act, shall be and the same is hereby repealed and made void. Signed by the order of the House. Frederick A. Muhlenberg, Speaker.

Enacted into a law at Philadelphia, on Wednesday the twelfth day of March, in the year of our Lord, one thousand seven hundred and eighty-three.

Peter Z. Lloyd, Clerk of the General Assembly.

To say in general terms this act was passed *to restrain the recovery of the old debts* for a given period, was rather conveying harder ideas of it than candour would justify; for from this description one would suppose that the act was passed to prevent actions being brought for a given period for the recovery of British debts in particular, whereas the act leaves every British and other creditor at liberty to commence and prosecute actions to *judgment*, and only restrains them for a limited time from *issuing executions* for the *principal sum* due. Your secretary is nevertheless of opinion, that by law to restrain for any given time British creditors from issuing execution or judgments regularly obtained, is an infraction of the fourth article of the treaty, and therefore that this act of Pennsylvania must be considered in that light.

To this act the list of grievances imputes consequences, with which it does not appear to be chargeable. "This law, it says, operating with the fears and "prejudices of some of the inhabitants, has produced "effects of the most mischievous consequence to the "British merchants; for not only a uniform opposition "has been made against the payment of *interest*, but "the lawyers, dreading the resentment of some of the "most violent among their countrymen, have refused to "engage in the recovery of these unpopular demands, "&c."

That there may have been an opposition to the payment of interest prevailing in Pennsylvania may be true, but the act affords no countenance to such opposition, nor does it contain any thing to discourage or to induce the people to discourage lawyers from commencing actions for the recovery of debts due to British subjects. That they may have been generally disinclined to such actions is possible, but surely they must reason strangely who, from the *personal* disinclination or refusal of lawyers to be concerned in certain causes, can argue *legal* impediments to the prosecution of such causes.

The act in question was followed by another, which, though less exceptionable, is not altogether free from objections. It passed the 23d December, 1784, and is as follows:

An act for directing the mode of recovering debts contracted before the first day of January, in the year of our Lord, 1777.

Whereas most of the debts contracted by the citizens of this state, before the first day of January, in the

year of our Lord, 1777, which yet remain unpaid, are due and owing from persons, who, from principles of honour and honesty, declined paying their debts in paper currency of less value than the money in which they were contracted, when by the laws of the state they might have so done, and it would be unreasonable that such debtors should be compelled or compellable to discharge their old debts in gold or silver money until it shall become more plenty, and easier to be acquired: And whereas divers acts have been heretofore made, giving time to such debtors to pay such debts, which acts have expired by their own limitation, and it is reasonable to provide a further term for the payment of such debts:

Be it therefore enacted, and it is hereby enacted by the representatives of the freemen of the commonwealth of Pennsylvania, in general assembly met, and by the authority of the same, That where any judgment hath already been or hereafter shall be entered in any court of record within this state, against any citizen or inhabitant thereof, either by default, or upon the confession of the party, the report of referees, the verdict of a jury, or otherwise, for any sum of money contracted for or due upon any bond, specialty, bill, note, bill of exchange, order, assumpsit, simple contract, or otherwise, or for rents, or annuities due or payable before the said first day of January, in the year 1777, such court is hereby authorized and required to ascertain the sum or sums so due, in each respective case, and thereupon to give judgment for the whole sum due, as well principal as legal interest, to the time of such judgment being obtained, with stay

of execution nevertheless for the respective times herein after limited, that is to say, as to one third part of the said principal and interest, and one year's interest thereon, and the whole cost and charges accrued thereon, for the term of one year from and after the passing of this act; as to one other third part thereof, and one year's interest upon the two third parts thereof, with the increased costs and charges thereon, for the term of two years from and after the passing of this act; and as to the remaining one third part thereof, with one years interest thereon, and the further increased costs and charges thereon, for the term of three years from and after the passing of this act; and that several executions for the said several proportions of the said debts or damages, may and shall be issued at the request of the plaintiff or plaintiffs, his, her or their executors, administrators or assigns, if the said several proportions of the same be not paid and discharged, with interest and costs, in the manner and at the times above specified. And in all such judgments hereafter to be entered, the stay of execution shall be regulated in equal third parts, that is to say, the first third part thereof for such time as shall be equal to one third part of the time between the entering of such judgment and the expiration of three years from the passing of this act; the second third part thereof for such time as shall be equal to two third parts of the time from the entering such judgment, and the expiration of three years from the passing of this act; and the remaining third part thereof until the expiration of the said three years from the passing of this act; after which time executions may and shall, at the request

of the plaintiff or plaintiffs, his or their executors, administrators or assigns, or any person for him or them, be issued against the defendant or defendants, his, her or their executors, administrators or assigns, without any writ or writs of scire facias to revive such judgments.

And be it further enacted by the authority aforesaid, That all process and proceedings upon any writs of execution now issued and in the hands of any sheriff or other officer within this state, founded upon judgments obtained for any such debts due before the first day of January, in the year of our Lord, 1777, shall be stayed; and the sheriffs and other officers are hereby forbid to proceed therein, if the defendant or defendants in such writ named, or some person for him or them, shall tender and pay to such sheriff or other officer the amount of the interest of such debt, and the costs and charges accrued thereon, at any time before actual sale of the goods and chattels, lands and tenements, taken in execution, and shall give security that the goods and chattels (if such be taken in execution upon such writs) shall be forth coming in equal plight and of equal value at the expiration of one year from the passing of this act, and satisfy such debts or damages as in the said writs are specified.

And whereas divers persons have assigned and made over their estates, or some parts thereof, to trustees, to be sold for the satisfaction of debts contracted before the said first day of January, 1777, and it is reasonable to allow to such assigning debtors the benefit of the terms herein before allowed to other debtors for discharging their old debts:

Be it therefore enacted, and it is hereby enacted by the authority aforesaid, That no assignee or assignees in trust of the estate of any debtor, whose debts were contracted and the assignment to secure the same was made before the said first day of January, 1777, shall have power to sell, or expose to sale, any part of the lands or tenements so to them or him assigned, for the purpose of raising money to pay such debts within the term of three years from the passing of this act, without the consent of such assigning debtor to be expressed in writing, or by his signing, as a witness or a party, to the deeds of conveyance of the same.

Provided always nevertheless, That nothing contained in this act shall be taken or construed to affect the recovery of any debt due to this state or to the United States; and that if any defendant or defendants, or any assigning debtor or debtors as aforesaid, are not or shall not be seized in his or their own right, of a real estate sufficient to satisfy beyond reprizes, all his, her or their debts, and shall be about to depart this state without securing the same, then and in such case, it shall and may be lawful to and for all and every plaintiff and plaintiffs, creditor and creditors, assignee or assignees, to sue out executions, and proceed to sale, of all their goods and chattels, lands and tenements, to satisfy such debts, in the same manner as he or they could have done the same, if this act had never been passed, any thing herein contained to the contrary in any wise notwithstanding.

And provided also, and be it further enacted by the authority aforesaid, That this act, nor any thing therein contained, shall not extend or be construed to ex-

tend to any debt or debts which were due before the fourth day of July, 1776, by any of the citizens of this state, to any of the subjects of Great Britain.

Signed by order of the house. John Bayard, Speaker.

Enacted into a law, at Philadelphia, on Thursday, the 23d day of December, in the year of our Lord, 1784. Samuel Bryan, Clerk of the General Assembly.

It is to be observed, that this act applies generally to all debts contracted prior to the 1st January, 1777, and that the proviso in favour of British creditors only prevents its extending to *such* debts to British subjects, as were *due* before the 4th July, 1776; so that the law is left to operate on all debts to British subjects, which became due between the 4th July, 1776, and 1st January, 1777. This discrimination in those debts appears to your secretary to be inconsistent with the treaty, and the more so, as debts which became due in the course of that interval might have been, and many of them doubtless were, contracted at a much more early date, and before actual war had taken place between the two countries. Inasmuch therefore as this act creates lawful impediments to the recovery of those debts to British subjects which became due or payable after the 4th July, 1776, your secretary thinks it does in that respect contravene the fourth article of the treaty.

Maryland is mentioned in the list of grievances as having violated the treaty by acts relative to debts due to British subjects, but no specifick complaint or charge is urged against her, nor is any one of the acts named as liable to that imputation or construction.

Against *Virginia* the list of grievances contains pointed complaints. It states that many British merchants had sent agents and factors to Maryland and Virginia to collect their debts, &c. &c. and that the governour of Virginia, on the 2d July, 1783, issued (what the complainants call) an *edict*, but in fact a proclamation, ordering as they say, "all the British agents and fac-"tors who had arrived in that state forthwith to de-"part the same."

This is not a candid representation of that proclamation. It is as follows:

By his Excellency Benjamin Harrison, Esquire, Governour of the Commonwealth of Virginia.

A Proclamation.

Whereas by reason of the late suspension of hostilities between the United States and his Britannick majesty, and an abuse of those indulgences granted to British commerce at the last session of general assembly, many evil disposed persons, still obnoxious to the laws of this commonwealth, have found means to introduce themselves into the same: And whereas it is probable many others will follow their example, to the disturbance of the peace and harmony of the state, unless speedily prevented by a vigorous execution of the law:—I have therefore thought fit, with the advice of the council of state, to issue this my proclamation, hereby commanding all such persons as have either voluntarily left this country and adhered to the enemy since the 19th of April, 1775, or have been expelled the same, by any act of the legislature or order of the

executive, or such natives who have at any time borne arms in the service of the enemy against this commonwealth, and have since returned without being authorized by law so to do, forthwith to depart the state. And I do further hereby strictly inhibit the return, as well of those as all others coming within the like description, until the determination of the legislature on this subject can be known. And to the end that this proclamation may have its full effect, I hereby enjoin and command all officers, civil and military, within this commonwealth, and all others concerned, to pay due obedience thereto.

Given under my hand, and seal of the commonwealth, in the council chamber, the second day of July, 1783. (Signed) Benjamin Harrison.

They who read this proclamation cannot easily avoid observing that it has no relation to *British agents and factors*, considered *as such*, but only to persons of certain descriptions, whose residence in Virginia was inadmissible by the laws then existing, and who while so circumstanced ought not to have gone, or been sent there, either as factors, or in any other character. It is also certain that this proclamation was issued on the 2d July, 1783, and that the treaty of peace was not ratified by either of the parties until the following year. It is very extraordinary therefore that, considering its contents and date, this proclamation should be viewed by any candid eye as an infraction of the fourth or any other article of the treaty; especially too as the complainants knew and do admit that in

November, 1783, and before the treaty was ratified, "the legislative body of Virginia removed the re-"striction."

They further complain, that although the said agents and factors have since remained unmolested, yet that "no permission whatsoever has been given either to "merchants acting for themselves, or to agents or fac-"tors acting for employers in Britain, to recover any "part of the debts or property left in the country in "the year 1775." But they do not particularize the acts of Virginia which impose the restrictions they complain of.

Your secretary nevertheless believes that fact to be as they represent it, for he finds it standing admitted by the assembly of Virginia in resolutions they passed on the 22d June, 1784, viz.

Virginia to wit.

In General Assembly, the 22d of June, 1784.

It appearing to the general assembly from a letter from his excellency general Washington, dated the 7th day of May, 1783, that in obedience to a resolution of Congress, he had a conference with general Carleton, on the subject of delivering up the slaves and other property belonging to the citizens of the United States, in compliance with the articles of the provisional treaty; that he (general Carleton) appeared to evade a compliance with the said treaty, by a misconstruction of the same, and permitted a large number of the said slaves to be sent off to Nova Scotia. It further appearing to the general assembly, from the testimony of

Thomas Walke, esquire, that he together with several other persons from the counties of Norfolk and Princess Anne, in or about the month of April, 1783, went to New York, with a view of recovering the slaves which had been taken from them by the British troops during the war; that not being permitted to take possession of those slaves, which they found in that city, the said Walke made a personal application to general Carleton, and requested a delivery of the said slaves in compliance with the seventh article of the treaty which prohibits the carrying off negroes, or other property, belonging to inhabitants of the United States. This he peremptorily refused, alleging that he was not authorized to do it without particular instructions from the British government; that at the time of this application the said Walke was informed by an aid de camp of general Carleton, that an agent was appointed to superintend the embarkation, and keep a register of slaves sent to Nova Scotia; and that he afterwards saw the said register, and also saw a large number of negroes embarked to be sent to that country. It farther appearing to the general assembly from the testimony of Mr. John Stewart, of the state of Maryland, as well as from a variety of other circumstances, that many applications were made to general Carleton, by citizens of America, for the restitution of property, which were invariably rejected:

Resolved, That there has been an infraction on the part of Great Britain, of the seventh article of the treaty of peace between the United States of America and Great Britain, in detaining the slaves and other property of the citizens of the United States.

Resolved, That the delegates representing this state in Congress be instructed to lay before that body the subject matter of the preceding information and resolution, and to request from them a remonstrance to the British court, complaining of the aforesaid infraction of the treaty of peace, and desiring a proper reparation of the injuries consequent thereupon; that the said delegates be instructed to inform Congress, that the general assembly has no inclination to interfere with the power of making treaties with foreign nations, which the confederation hath wisely vested in Congress; but it is conceived, that a just regard to the national honour and interest of the citizens of this commonwealth obliges the assembly to withhold their co-operation in the complete fulfilment of the said treaty, until the success of the aforesaid remonstrance is known, or Congress shall signify their sentiments touching the premises.

Resolved, That so soon as reparation is made for the aforesaid infraction, or Congress shall judge it indispensably necessary, such acts of the legislature passed during the late war, as inhibit the recovery of British debts, ought to be repealed, and payment thereof made in such time and manner as shall consist with the exhausted situation of this commonwealth. Extract from the journal of assembly. John Beckley, Clerk H. D.

Inasmuch therefore as laws of Virginia, existing in force after the peace, *did inhibit the recovery of British debts*, there can be no doubt, but that such inhibition was and is an infraction of the fourth article of

the treaty. Whether that infraction was justifiable, or in other words, whether the reasons assigned for it in the preamble to those resolutions were good and sufficient, shall be considered under a distinct head.

As to the bill said to have passed the legislature of Virginia, in October, 1784, the complainants admit that it never became a law, and therefore it is, and ought to be, entirely out of question.

North Carolina is classed with Virginia in such a manner as to infuse an idea of her having given occasion to similar complaints, but not a single charge being specified or stated against her, there is reason to presume that she had not given just cause for complaint. Whether that is or is not in fact the case, your secretary is uninformed, not having as yet been able to procure a copy of the acts of North Carolina.

Of *South Carolina* the list of grievances complains in strong and pointed terms. It takes particular notice of an ordinance passed there the 26th March, 1784, viz.

An ordinance respecting suits for the recovery of debts.

Be it ordained by the honourable the senate and house of representatives met in general assembly, and by the authority of the same, That no suit or action shall be commenced either in equity or at law for the recovery of any debt or bond, note or account, contracted by a citizen of this or any of the United States, previous to the 26th day of February, in the year of our Lord, 1782, until the first day of January next, after which time it shall and may be lawful to and for any person and all persons, to sue for and recover all

interest which shall have accrued since the first day of January, 1780, on all bonds, notes, or other contracts bearing interest; provided nevertheless, that nothing herein contained shall be construed to extend to prevent any creditor from suing for and recovering all interest accruing upon bond or notes, since the 26th day of February, 1782.

And be it further ordained by the authority aforesaid, That it shall and may be lawful for any person and all persons, to whom any debt shall be due as aforesaid, to sue for and recover after the first day of January, which will be in the year of our Lord, 1786, all such other interest as may be then due on such debt, and the fourth part of the principal debt which shall be owing to him, her or them; and from and after the first day of January, which will be in the year of our Lord, 1787, one other fourth part of the principal debt, with the interest which shall have accrued thereon; and from and after the first day of January, which will be in the year of our Lord, 1788, one other fourth part of the principal debt, with the interest which shall have accrued thereon; and from and after the first day of January, which will be in the year of our Lord, 1789, the balance which may be then due and owing: provided nevertheless, that if any person who shall be indebted as aforesaid, shall, after a notice of ten days, refuse to give security to his creditor (which notice shall be proved by such creditor on oath before any justice of the peace) for the payment of such sum or sums of money as may be due and owing to him, to be approved of by one of the judges of the court of common pleas, if in Charleston district, and by a commissioner

for taking special bail, if in any of the circuit court districts, that in such case it shall and may be lawful for the creditor to sue for the said debt, and to proceed to execution, which execution may be levied, and the property so seized be sold, if the debtor shall refuse to give the security hereby required, and pay the costs of suit.

And be it further ordained by the authority aforesaid, That all moneys which shall be due on such open accounts as are restrained by this ordinance from being sued, shall bear an interest of seven per cent. per annum from the passing of this ordinance.

And be it further ordained by the authority aforesaid, That all bonds or other securities which have been given since the 26th day of February, in the year of our Lord, 1782, for debts contracted previous to that day, except bonds or notes which have been taken for interest due since that time, shall be, and the same are hereby declared to be no otherwise recoverable than other debts for which securities have not been given.

And be it further ordained by the authority aforesaid, That no seizure shall be made of any property which may have been mortgaged previous to the 26th day of February, in the year of our Lord, 1782; provided the person whose property has been mortgaged shall pay the principal and interest of the debt for which the said property has been mortgaged at such periods as are required by this ordinance; and on failure thereof the said mortgaged property may be taken and held by the person to whom the same has been so mortgaged, until the payment shall be made as aforesaid.

In the senate house, the 26th day of March, in the year of our Lord, 1784, and in the eighth year of the independence of the United States of America. John Lloyd, President of the Senate. Hugh Rutledge, Speaker of the House of Representatives.

The most cursory comparison of this ordinance with the fourth article of the treaty, will point out the direct opposition that exists between them.

The list of grievances also states with much particularity an act of South Carolina, which it says was passed 12th October, 1785, and entitled "An act for regu- "lating sales under execution, and for other purposes "therein mentioned," whereby a debtor during any period of a suit that has been or may be commenced, is allowed to tender land in payment of his debts, &c.

Your secretary has not been able to procure a copy of this act. If the account given of it in the list of grievances be accurate, it certainly is a singular act, and a plain violation of the fourth article, which expressly stipulates for the recovery of the full value *in sterling money* of all bona fide debts, &c. In the same light must be viewed the pleas (if adjudged good ones) of former tenders in depreciated paper in bar of the demands of British creditors.

The list of grievances in a summary manner charges *Georgia* with having passed laws and regulations similar to those in South Carolina, and with degrees of peculiar and manifest aggravation. But as none of these laws or regulations are specified, and as your secretary has not the acts of Georgia, he cannot decide how far these complaints against her are well founded

or otherwise. It is much to be wished that the executive of each of the states could be prevailed upon, at the conclusion of every session, to transmit to Congress copies of all the acts passed by the legislature during the course of it; or that Congress would be pleased to direct that such copies be regularly purchased and sent to them at the publick expense.

There are other matters mentioned in the list of grievances relative to the performance of the fourth article, which merit some consideration. They may be comprised under two heads.

1. Popular and unpopular opposition to the recovery of debts.

2. The payments in paper made into state treasuries, on account of debts due to British creditors, pursuant to certain acts of some of the states requiring or authorizing the same.

With respect to the *first* of these, your secretary thinks the following observations are applicable to such cases, when and wherever arising.

Although popular reluctance and opposition to pay debts may, and probably does in some instances, retard and embarrass the recovery of them, yet while the course of justice continues steadily to bear down that opposition, and to execute the laws with punctuality and decision, such vanquished opposition rather does honour than discredit to the government, and therefore however inconvenient any temporary commotions or improper combinations may have been, yet the vigorous and effectual interposition of government must forever acquit it of blame.

But if from the imbecility and relaxation, or from the connivance of government, it should so happen, that the ordinary course of justice becomes and continues so obstructed as that foreigners, claiming the benefit of treaties with the United States, cannot avail themselves of rights secured to them by such treaties, then in his opinion the delinquent state cannot be without blame; for as every government is and must be presumed to have sufficient power and energy to exact from its own citizens a compliance with their own compacts and stipulations, a failure or omission to do it will naturally be imputed to the want of inclination, and not to the want of means. Whenever such cases happen, they must excite the notice of Congress, to whom it appertains to see that national treaties be faithfully observed throughout the whole extent of their jurisdiction.

Your secretary does not think himself warranted by any facts which have hitherto come to his knowledge, to apply these principles against any of the states; for although the list of grievances complains "that so great "and general are the obstructions to the recovery of "debts, that in several districts remote from Charles-"ton, the courts have been prevented, by tumultuous "and riotous proceedings, from determining actions of "debt," yet it neither informs us whether this was a singular or a common case, nor whether the government did or did not interpose and re-establish good order. The presumption is, that the government did what they ought to have done; and he thinks such must continue to be the presumption, until well authenticated facts shall declare it to be ill founded.

Your secretary does not experience much difficulty in forming a judgment of what is right relative to the payments made into some of the state treasuries, by debtors to British creditors, in pursuance of certain state acts requiring or authorizing the same.

From the principles stated in the preceding part of this report your secretary infers, that the treaty of peace does consider the debts mentioned in the fourth article as being exactly in their original state of obligation and extent, leaving the contracts on which they depend, to be executed according to the tenor, true intent and meaning of them. If so, British creditors have no sort of concern with any payments (made on account of the debts due to them) other than such as they either accepted, directed or approved; for in relation to the creditor, all such payments are as if they had never been made, and he is justifiable in proceeding against his debtor accordingly. But between the debtor so paying into a state treasury, and the state directing, inviting or authorizing him to do it, an account should be opened; and the state is, in your secretary's opinion, bound in justice to repay him the then real value of such money as he so put into the treasury, together with lawful interest for the use of it.

But violations of the fourth article are not the only ones alleged in the list of grievances. It expressly charges, that as little respect has in certain instances been paid to the fifth and sixth articles. Of these in their order.

The fifth article is in these words: "It is agreed, "that Congress shall earnestly recommend it to the "legislatures of the respective states, to provide for

"the restitution of all estates, rights and properties, "which have been confiscated, belonging to real Bri- "tish subjects, and also of the estates, rights and pro- "perties of persons resident in districts in possession "of his majesty's arms, and who have not borne arms "against the said United States; and that persons of any "other description shall have free liberty to go to any "part or parts of the thirteen United States, and therein "to remain twelve months unmolested in their endea- "vours to obtain the restitution of such of their "estates, rights and properties, as may have been "confiscated; and that Congress shall also earnestly "recommend to the several states, a reconsideration "and revision of all acts or laws respecting the pre- "mises, so as to render the said acts or laws perfectly "consistent, not only with justice and equity, but with "that spirit of conciliation, which, on the return of the "blessings of peace, should universally prevail; and "that Congress shall also earnestly recommend to the "several states, that the estates, rights and properties of "such last mentioned persons shall be restored to them, "they refunding to any persons who may now be in "possession, the bona fide price (where any has been "given) which such persons may have paid on pur- "chasing any of the said lands, rights or properties, "since the confiscation. And it is agreed, that all per- "sons who may have any interest in confiscated lands, "either by debts, marriage settlements, or otherwise, "shall meet with no lawful impediment in the prosecu- "tion of their just rights."

The complainants insist that South Carolina has violated this article, and in the following instances, viz.

1. That certain persons were permitted to go there to obtain the restitution of their rights and properties, and that the purposes for which they went were frustrated by a suspension of the courts of justice. That they were compelled to depart by a publick notification from the governour, after having been at considerable expense of time and money in a delusive pursuit. That during their stay they experienced great personal insult and abuse.

Who these persons were, may be conjectured from the purposes for which they went to South Carolina. They went to *obtain the restitution of their rights and properties*, and were probably of the number of those who were objects of a certain act passed there the 26th February, 1782, entitled "An act for disposing of "certain estates, and banishing certain persons therein "mentioned."

It should be remembered that this act was passed during the war. An examination of it and of some subsequent acts will tend to show how far the complaint of these persons is well founded.

This act divides the persons intended to be affected by it into classes.

The first class was composed of persons who were known to be *subjects of his Britannick majesty*. Their names are mentioned in a schedule annexed to the act, which is distinguished by list No. 1. No personal offences are imputed to them, and national reasons are assigned for divesting them of their property

real and personal, " debts excepted," for the use of the state.

The second class was composed of persons who, owing *allegiance* to the state, refused to take an oath professing the same.

The third class consisted of persons who, owing *allegiance* to the state, had in 1779 taken up arms with the enemy, and having by proclamation been required by name to surrender themselves by a given time, did not obey. The act divests them of their estates, with exception however of such as had returned and borne arms in defence of the state, before the 27th September, 1781.

The fourth class (named in list No. 2.) had withdrawn themselves from their *allegiance*, and congratulated the enemy's leaders on the reduction of Charleston.

The fifth class (named in list No. 3.) had withdrawn from their *allegiance*, and requested to be embodied and to be permitted to serve as royal militia.

The sixth class (named in list No. 4.) had, in violation of their *duty to the state*, and with circumstances aggravating the impropriety of such conduct, congratulated earl Cornwallis on his success, and gloried in the blood of their countrymen shed by the enemy.

The seventh class (named in list No. 5.) held, or had held, commissions in the enemy's service, in defiance of an act of the state declaring such offences to be capital.

The eighth class (named in list No. 6.) had manifested their attachment to the British government, and their inveteracy to the state.

The act divested these seven last mentioned classes of their estates, and banished all those whose names are mentioned in lists No. 2, 3, 4 and 5.

From this act, compared with the case of the complainants as stated by themselvès, it may fairly be inferred that they are not *British subjects*, for none of that character are banished by the act.

During the course of the same session, viz. 1782, an act was passed entitled, "An act for pardoning the "persons therein *described*, on the conditions therein "mentioned." The preamble is in these words: "Whereas many persons, inhabitants of and owing "allegiance to this state, some of them having signed "congratulatory addresses to sir Henry Clinton, and "Mariot Aburthnot, esquire, and to the earl Cornwallis, "on the successes of his Britannick majesty's arms in "this country, and others having borne commissions un-"der the British government, are excepted by the go-"vernour's proclamation, bearing date on or about the "27th September last, from pardon for those offences: "And whereas some of the said persons have surren-"dered to the justice, and submitted themselves to the "mercy of their country: And whereas many persons "who would have been entitled to the benefit of the "said proclamation, had they returned to their allegi-"ance before the expiration of the time limited for the "same, did neglect to surrender themselves, but have "since the 17th day of December withdrawn from the "enemy and borne arms in defence of this state, and "the legislature moved with compassion, are willing to "grant them pardon on conditions which may in some "degree atone for those offences."

The act then proceeds to charge them with the payment (within six months) of ten per cent. on the amount of their estates, and thereupon to grant a full pardon to them all, excepting only such as were or might be accused of counterfeiting money, plundering, robbery, houseburning, housebreaking, or murder. It also pardons all such as had borne arms with the enemy, and had come out since the 17th December, and who had no estates; it however bound them over to the next session, and required that they should either do nine months duty in the militia, or enlist in the continental service.

Although this merciful and humane act comprehended a large number of persons, yet it seems that the complainants were either not included in it, or have failed to comply with the terms it required.

On the 16th March, 1783, an act was passed "*to* "*alter and amend* the act entitled an act for disposing "of certain estates and banishing certain persons "therein mentioned."

This act also bears strong marks of temper and humanity. The preamble recites "that whereas in "and by the sixteenth section of the said act it is "enacted, that instead of inflicting capital punishment "on such persons, they should be, and they are thereby "to be for ever banished from the said state: and if "any of the said persons should remain in the said "state forty days next after the passing of the said "act, or should return to this state, the governour or "commander in chief for the time being is thereby "authorized and required to cause the persons re-"maining in, or returning to the state, to be apprehend-

"ed and committed to gaol, there to remain without "bail or mainprize, until a convenient opportunity "should offer of transporting the said person or per- "sons from this state to some part of his Britannick "majesty's dominions, which the governour or com- "mander in chief for the time being is thereby re- "quired to do: and if any of the said persons should "return to this state after such transportation, then "and in such case, he or they should be adjudged, and "they are thereby declared to be guilty of felony, and "should, upon conviction of the offence of having re- "turned as aforesaid, suffer death without benefit of "clergy:

"And whereas notwithstanding the said act, on the "evacuation of the garrison at Charleston by the British "forces, on the fourteenth day of December last past, "many persons whose names are mentioned in the list "annexed to the said act, relying on the lenity of the "American government, and the mercy of their fellow "citizens, did remain and continue in Charleston, and "have surrendered themselves to the custody of the "sheriff of Charleston district, and have been confin- "ed by virtue of and in pursuance of the said recited "act, in the common gaol of Charleston district:

"And whereas such persons have severally prefer- "red their humble petitions to the legislature of the "said state, asserting their innocence of any of the "crimes imputed to them, and praying for a trial and "full examination of their conduct, which petitions "have been received and are referred to proper com- "mittees, by both houses of the legislature: And "whereas it is considered unnecessary in such cases,

"to carry the said in part recited act into a full and "strict execution, with respect to the close imprison- "ment and sale of the effects of the said persons as "aforesaid surrendering and submitting themselves; "and the legislature, with its accustomed lenity, hath "resolved to admit bail for such persons to be taken "to enforce their appearance at a future day, when the "merits of their petitions shall have been decided on."

The act accordingly admits them to bail, and suspends the further sale of their estates until their cases should be finally decided on. To this act there is annexed, "a list of persons on the confiscation bill who "have petitioned, and whose cases have been favoura- "bly determined in the senate, and others who have "been favourably reported on in the house of repre- "sentatives." This list contains above seventy names; the complainants however seem not to have been of that description.

In the same session another good natured act was passed, which among other things provided, "that the "household furniture, plate, linen, wearing apparel, "carriages and carriage horses, with such negroes as "were generally attendant upon the family of those "persons who were described in the confiscation act, "*should be allowed to them.*"

Your secretary takes notice of this act because it indicates a degree of humanity in the legislature which, considering the outrages committed in that state, is remarkable.

On the 17th March, 1783, an ordinance was passed for disposing of the estates of certain persons, and for other purposes therein mentioned. It recites, "that

" many of the former citizens of that state in violation " of their allegiance had withdrawn themselves, and " joined the enemy." It confiscates the estates of such persons. It directs the commanding officers of the several regiments of militia to return the names of such persons to the commissioners within three months. With great regard for justice and fairness, it permits such persons to return to the state within six months after the *end* of that session, *to take their trial*, and declares the ordinance to be void as to such of them as should be acquitted.

If the complainants were of the class mentioned in this act, they either neglected the means it prescribes for them to manifest their innocence, or they failed in doing it.

On the 26th March, 1784, an act was passed which in the opinion of your secretary places the magnanimity and moderation of the state in so distinguished a point of light, that it ought to be inserted at large in this report.

An act for restoring to certain persons therein mentioned, their estates, both real and personal, and for permitting the said persons to return to this state, and for other purposes therein mentioned.

Whereas by an act entitled, " an act for disposing " of certain estates, and banishing certain persons " therein mentioned," the estates of such persons were confiscated and forfeited to the use of this state: and whereas the United States in Congress assembled have earnestly recommended to the several states to reconsider and revise their laws regarding confiscation, so as to render the said laws perfectly consistent

not only with justice and equity but with that spirit of conciliation which, on the returns of the blessings of peace, should universally prevail :

Be it enacted by the honourable the senate and house of representatives in general assembly met, and by the authority of the same, That all and every the estate and estates, both real and personal, of the several persons whose names are mentioned in the list No. 1, hereunto annexed, and which estates have not been sold by the commissioners of forfeited estates, is, and are, and shall be, taken from and divested out of the commissioners appointed by the said act for disposing of the said estates, and from their heirs; and every such estate is hereby restored to and revested in the several persons respectively mentioned in the said list No. 1, and to the heirs of each and every of them, in the same manner, and for the same use and behoof as each and every of the said persons were seized or possessed of the same, before the passing of the said act.

And be it further enacted by the authority aforesaid, That all and every of the said person and persons mentioned in the lists No. 1, 2 and 3 be allowed and permitted to return to, and reside in this state, and every part, clause, matter and thing in the said act contained, respecting the banishment of the said persons, and the disposal of their estates for the use of this state, except such parts thereof as have been sold by the commissioners of forfeited estates, be and the same is hereby repealed.

Provided always, and be it further enacted by the authority aforesaid, That the persons named in the lists

No 1 and 3, their attorneys or agents, where their estates have not been sold, should make a just and true return to the said commissioners, on oath or affirmation, of all their estates real and personal, within four months next after the passing this act, and that the said commissioners shall cause an assessment of twelve per cent. to be rated on the just and real value of such estates, which assessment shall be paid by the said persons to the said commissioners in specie, on or before the first day of March, 1785, and on their failing to do so, the said commissioners shall cause such assessment to be levied and paid into the treasury, for the use of this state, and that the said assessment shall be rated and levied in the mode prescribed by the amercement act, with respect to the amercement thereby imposed; and where their estates have been sold, twelve per cent. shall be deducted from the amount sales thereof, and that the commissioners of confiscated estates shall be allowed a commission of two pounds per centum.

And be it further enacted by the authority aforesaid, That all and every estate and estates, both real and personal, of the several persons whose names are mentioned in the list No. 2 hereunto annexed, where the same is not yet sold, shall be taken from and divested out of the said commissioners and their heirs as aforesaid, and every such estate is hereby restored to, and revested in the several persons respectively mentioned in the said list No. 2, and to the heirs of each and every of them, in as full and ample a manner as hath been extended to the persons and their heirs comprehended in the list No. 1; and that all and every per-

son and persons mentioned in the said list No. 2, be allowed and permitted to return to, and reside in this state; and that they or any of them shall not be liable or subject to any amercement whatsoever, and every part, clause, matter and thing in the said act contained, respecting the banishment of the said persons, and the disposal of their estates, where any such estate hath not and is not already sold by the commissioners aforesaid, for the use of the state, be and the same is hereby repealed.

And be it further enacted by the authority aforesaid, That in all and every case wherein the estate of any of the said persons hath been sold by the said commissioners, and the purchaser shall be unwilling to give up the purchase to such original proprietor, then it shall and may be lawful for the commissioners of the treasury or the commissioners of forfeited estates, and they are hereby authorized and required, to pay on demand to every person respectively, in the said lists No. 1, 2 and 3 comprehended, all such indents and specie as they the said treasurers or commissioners have or may receive from the said purchasers. And in all and every case, where such purchaser shall agree to give up his purchase to any original proprietor in the said three lists comprehended, (which proprietor shall be obliged to accept the said relinquishment) then in that case the commissioners of the treasury and the commissioners of forfeited estates, as the case may be, are hereby authorized and required to give up and restore to every such purchaser his bond and other security given for the purchase: provided always, that all and every person in the said

lists No. 1, 2 and 3 comprehended, shall be liable and subject to pay all commissions and charges which may be due to the commissioners of forfeited estates, or others acting under their authority. And in any instance where the negroes or other property of any person hereby subject or liable to amercement hath been sold or taken, or moneys have been received by virtue of any law or publick authority of this state, the price for which such negroes were sold, and the value of such other property and money received as aforesaid, shall be allowed in discount of their amercement respectively.

And be it further enacted by the authority aforesaid, That the several persons whose names are contained on the list No. 3, and all such on the list No. 1, who held military commissions at any time during the war, be disqualified from being elected governour, lieutenant governour, member of the privy council, or of either branch of the legislature, or of holding any office or place of trust within, or under the authority of this state, for and during the term of seven years.

And whereas several persons have applied to the legislature to be relieved from the penalties of an act entitled "An act for amercing certain persons therein "mentioned," whose petitions are referred to a committee of each branch of the legislature:

Be it therefore enacted by the authority aforesaid, That as much of the said act as respects the several persons favourably reported on in either house, shall be, and the same is hereby repealed. And that the operation of the said act shall be suspended as to the remainder of the said persons therein mentioned, until

the end of the next meeting and sitting of the legislature.

And be it further enacted by the authority aforesaid, That Nathaniel Russell, William Roach, James Wright, Peter Prow and Andrew Keigler, be, and they are hereby exempted from all the pains, penalties and forfeitures of an ordinance of the general assembly, passed the 17th day of March, 1783, entitled "An ordi- "nance for the disposal of the estates of certain per- "sons, subjects and adherents of the British govern- "ment, and for other purposes therein mentioned."

In the same spirit of humanity the legislature afterwards, to wit, the 19th March, 1785, passed a benevolent act, entitled, "An act to afford a maintenance "to the persons therein mentioned," and is as follows, viz.

Whereas it is but consistent with justice and humanity, that a suitable maintenance should be made to the widows and orphans of the following persons, whose whole estates are under confiscation:

Be it therefore enacted by the honourable the senate and house of representatives now met and sitting in general assembly, and by the authority of the same, That the plantation or tract of land on Reaburn's creek, containing two hundred acres, late the property of Andrew Cunningham, whereon he formerly lived, and not sold by the commissioners of forfeited estates, shall be and the same is hereby vested in Margaret Cunningham (relict of the said Andrew Cunningham) and her children by the said Andrew Cunningham, now alive, their heirs and assigns forever.

Be it enacted by the authority aforesaid, That all those two plantations or tracts of land, situate in the neighbourhood of Ninety-Six, late the property of Culbert Anderson, containing in the whole four hundred and forty-one acres, and which were sold to captain Richard Pollard, in July, 1783, but the terms of sale not complied with, shall be and the same are hereby vested in Mary Anderson (relict of the said Culbert Anderson) and her children by the said Culbert Anderson, now alive, their heirs and assigns for ever; she paying the surveyor's fees, and contingent charges on the sale.

Be it enacted by the authority aforesaid, That those two tenements or lots of land, late the property of Edward Oats, situate in Colleton-Square, the one seventy-five feet front, and one hundred feet deep, the other thirty feet front and seventy-five feet deep, with eleven acres of land, more or less, on Daniel's Island, shall be and the same are hereby vested in Elizabeth Oats (widow and relict of the said Edward Oats) and her children by the said Edward Oats, their heirs and assigns for ever; she paying the expenses and contingent charges on the sale.

Be it enacted by the authority aforesaid, That five hundred acres of any lands, late the property of William Guest, not sold by the commissioners of forfeited estates, that Sarah Guest, wife of the said William Guest, shall choose, shall be and the same is hereby vested in the said Sarah Guest and her children by the said William Guest, their heirs and assigns for ever.

And be it further enacted by the authority aforesaid, That all personal property under confiscation,

not disposed of for publick purposes, lately belonging to the said Andrew Cunningham, Culbert Anderson, William Guest and Edward Oats, shall be and the same is hereby restored to and vested in the said Margaret Cunningham, Mary Anderson, Sarah Guest and Elizabeth Oats, respectively, and their respective children: provided always, that each estate or parts of estate so restored by this act, shall be subject to the payment of all just and bona fide debts that may be against such estate.

In the Senate House, the 19th day of March, A. D. 1785, and in the 9th year of the independence of the United States of America. John Lloyd, President of the Senate. John Fauchereaud Grinke, Speaker of the House of Representatives.

On the 24th March, 1785, an act was passed whereby the estate which had been confiscated of Edward Fenwick was restored to, and revested in him, and he permitted to remain twelve months in the state.

From these several acts it is apparent, that although much severity was naturally to be expected, and would have been excusable in South Carolina, considering the manner in which she had been treated, yet great regard to justice, and an uncommon degree of benevolence, humanity and mercy, has marked her conduct towards her offending citizens. How it happened that the complainants have not experienced the good effects of this continued prevailing disposition, cannot easily be accounted for on any principles reputable to their characters.

They seem to have forgotten that the fifth article of the treaty (the last clause only excepted which has no relation to their complaint) contains no other stipulation than that Congress should *recommend* the several matters therein stipulated. Congress accordingly recommended them; and South Carolina complied with those recommendations to a great extent. That state was at liberty to comply or not to comply in the whole or in part; she has shown much mercy, and is not responsible for not showing more. In that state as in some others, there doubtless were some citizens to whom more mercy than they have received would have been injustice. Who the complainants are, or what may be their character, or particular cases, does not appear from the list of grievances, nor has your secretary any information respecting them. They had permission, it seems, to go to Charleston. That was a matter of favour, not of right. After a certain time they were ordered to depart. All this may be true, and yet the treaty remain unviolated.

They say the purposes of their going there were frustrated by a suspension of the courts of justice; if so, it is evident that their business was not with the legislative but with the courts; and business with the latter for the restitution or recovery of rights and property may as well be transacted by attorney as in person.

If after coming there they were insulted and abused, the persons who treated them in that manner acted improperly; but insults and abuses are often of a kind of which the law takes no notice; and it is probable that those in question were of that kind, for the com-

plainants do not allege the contrary, nor do they in that respect impute any blame to the government, which they would doubtless have done, if there had been room for it.

2. That several British merchants, while Charleston was in possession of his majesty's troops, accepted in payment of debts, houses and lands, which on the 4th of July, 1776, were the property of persons, whose estates were confiscated by an act passed 26th February, 1782, but which *retrospected* to the 4th July, 1776.

That these lands which since July, 1776, had been often transferred and actually belonged to *British merchants* when the act passed, were afterwards, viz. in June, 1784, sold by the commissioners of confiscated estates, without any regard to the claims of these merchants founded on the fifth and sixth articles of the treaty.

Under this head the first question that presents itself is, whether, or how far it was right that the act of the 26th February, 1782, should retrospect to 4th July, 1776.

This question may be discussed with more perspicuity by distinguishing between the *British subjects*, and the offending *citizens* who were the objects of this act.

The first violated no allegiance to the state, for they owed none. The act imputes no particular offences to them, but assigns general and national reasons for confiscating their property.

On the 4th July, 1776, all British subjects became aliens to the United States; thenceforth to the end of

the war they were not only aliens, but alien enemies; as such they were during that period under legal disabilities, either to acquire or convey lands in this country. On these principles therefore it was right and just that the act should consider all those lands to be still the lands of the British subjects in question, of which they were proprietors on the 4th July, 1776.

The next inquiry is, Whether the like retrospect in the cases of offending *citizens* was justifiable?

On this point your secretary thinks it not improper to observe, that if it shall appear that the complainants are not interested in nor affected by such retrospect, that then it is a matter which they being foreigners have no right to meddle with, nor to complain of.

By their own showing it appears, that the complainants are and were British merchants, that is British subjects, who during the war, when they were alien enemies, accepted grants of lands lying in this country in payment of debts. No point is more indisputable or more clearly established, both by the law of this country and of England, than that alienation of land to an alien operates a forfeiture of it to the sovereign; and if such be the law respecting alien friends, with how much greater force does it apply to the case of alien enemies? It follows then that the British merchants in question, not being capable of purchasing and holding lands in this country, nothing passed to them by the said grants from their debtors; and if they thereby acquired no right or title to the lands in contemplation, they can with no propriety complain of or reprehend the legislature of South Carolina for passing that or any other law respecting those lands.

As your secretary considers this reasoning as being conclusive, he thinks it unnecessary to swell this report by any further remarks on the retrospect in this act.

There remains but one further question on this head, viz. Whether the fifth or the sixth articles of the treaty contain any thing to validate the titles which these British merchants claim to have to these lands?

By the fifth article "it is agreed that all persons "who may have any interest in confiscated lands either "by debts, marriage settlements, or otherwise, shall "meet with no lawful impediment in the prosecution of "their just rights."

The obvious meaning of which is, that all fair lawful contracts touching land, to which the parties were at the time competent, shall continue in full force and be executed in favour of innocent persons claiming the benefit thereof, notwithstanding the said lands may have been confiscated. The article clearly relates to grants or contracts which at the time they were made were valid, and not to grants or contracts which at the time they were made conveyed no rights to the grantees or contractees. The article expressly removes impediments to the prosecution of just or legal rights, and that idea excludes the supposition of its meaning to confer validity to claims not warranted by law, or to create rights which at no prior period had even existence.

If therefore these British merchants never had nor could have title to or interest in these lands by any grants made during the war and subsequent to July, 1776, your secretary cannot perceive the most distant

reason for blaming the conduct of the commissioners in paying no respect to such fruitless grants.

As to the sixth article, it gives no colour to the complaint. It provides,

1. That there shall be no future confiscation.

The confiscation in question was *prior* and not *future* to the treaty.

2. It forbids the *commencement* of prosecutions against any person for *the part he may have taken during the war.*

The sale of lands long before vested in the state by confiscation, can with no more propriety be called a *commencement of a prosecution*, than the leasing, or tilling, or fencing it can be.

3. It declares that no person shall *on that account* suffer any *future* loss in his person, liberty or property.

If there was any *loss* in the present case, it arose from the confiscation that took place during the war, which, being in point of time before the treaty, cannot be easily construed to have been *posterior* or *future* to it.

Thus your secretary has considered this complaint as resting on the facts and principles stated and assumed by the complainants, and he presumes that nothing further need be added to manifest its futility. He cannot however dismiss it, without remarking the want of candour observable in the statement of this complaint.

This complaint gives the reader to understand that the act retrospected generally, and confiscated without exception of cases, the lands which the persons, who were the objects of it, possessed on the 4th July.

1776. The fact is otherwise, for that very act contains the following clause, viz.

"And be it further enacted by the authority aforesaid, that all real and personal property, of which the persons named in the said lists were possessed, either by themselves or agents, on the 4th July, 1776, or at any time between that day and the 12th May, 1780, shall be held and deemed to be still theirs, *unless the same was really and bona fide sold, and conveyed for a valuable consideration of money paid or secured to be paid, and actual possession given to the purchaser before the said 12th May, without any secret trust or condition, and not with a view of eluding a forfeiture.*"

On the 16th March, 1783, an act was passed for amending the confiscation act, and in it there is a clause which enacts "That where purchases have been made of the property of the banished persons, *before the passing of the confiscation* act, by persons who were then citizens of this, or of the United States, and where such purchases have been actually paid for, or only part of the purchase money paid, such persons shall still retain the property so purchased; provided the same was made for a valuable consideration of money to be paid without collusion, or fraud, &c."

The fact then really is, that the retrospect in question was so narrowed and limited, as to become perfectly consistent not only with strict law and justice, but with the more delicate principles of equity and good conscience.

Lest an idea should be imbibed from this complaint that bona fide creditors lost their debts by this act of confiscation, it may be well to refer those who may not be well informed on the subject to the first enacting clause of the last mentioned act, which provides, "that "the estates of the persons mentioned on the list No. "one, specified in the said act, of those who left this "country upon refusing to take the oath of allegiance, "and also those who withdrew from their allegiance, "and went over to, and took up arms with, the enemy "in the year of our Lord, 1779, shall be respectively "liable to discharge the debts due by them, as the "estates of those persons who are mentioned on the "list, numbers two, three, four, five and six." It further provides, that such debts "when examined and "certified by the auditor general, shall be allowed in "purchase of any confiscated property, where the "estates against which the debts shall be so certified "are fully and clearly equal to the demands upon "them; or, at the option of such creditors, they shall "be paid proportionably out of the annual interest aris-"ing on the bonds given for the purchase of confiscat-"ed estates." The act directs such demands to be brought in and liquidated by the 20th July next; but by a posterior act, passed 26th March, 1784, the term was extended to 26th March, 1785.

The list of grievances also contains a singular complaint respecting certain adjudications in Charleston; for it is not suggested that any act of the legislature had been passed on the subject, viz.

"That the decisions of the board of police, establish-"ed under the king's government in Charleston, how-

" ever equitable, have been set aside since the peace. " British subjects have been deprived of their property " purchased under its process, and cast in excessive " damages and costs, for no other cause than having " brought actions therein for the recovery of debts, " even where the defendant had confessed judgment, " and when both plaintiff and defendant were British " subjects."

If the complainants had particularized any one of these cases, by stating the nature of the cause, the names of the parties, and by what court and when it was tried and adjudged, more respect would have been due to their representation than it seems to merit in its present form. Why these important particulars were omitted can only be conjectured.

Your secretary has no other information respecting these extraordinary facts than what he derives from the list of grievances. To him, however, it appears sufficient to observe, that the laws of nations afford an answer to this complaint, which ought, in the present state of it to be satisfactory, viz. " As the administra- " tion of justice necessarily requires that every defini- " tive sentence, regularly pronounced, be esteemed " just, and executed as such, as soon as a cause in " which foreigners find themselves interested has been " decided in form, the sovereign of the defendant can- " not hear their complaints. To undertake to exa- " mine the justice of a definitive sentence, is to attack " the jurisdiction of him who has passed it. The " prince ought not then to interfere in the causes of " his subjects in foreign countries, and to grant them " his protection, excepting in the cases of a refusal of

" justice, palpable and evident injustice, a manifest " violation of rules and form, or an odious distinction " made to the prejudice of his subjects, or of foreigners " in general."

Your secretary having considered several matters alleged against South Carolina as violations of the sixth article, will now proceed to examine the remaining complaints of the like kind against New York; for South Carolina and New York are the only states against whom such complaints are made.

It should be remembered that this article contains five express and positive stipulations, viz.

1. That there shall be no future confiscations made.

2. That there shall not be any prosecutions commenced against any *for the part he may have taken during the war.*

3. That no person shall *on that account* suffer any future loss or damage either in his person, liberty or property.

4. That persons in confinement on such charges shall be set at liberty; and

5. That the prosecutions so commenced shall be discontinued.

It is charged that the state of New York has violated this article; for that by an act " passed the 17th " March, 1783, and confirmed by others in 1784 and " 1785, those Americans who had abandoned their " possessions in New York, upon its capture by the " British troops, and resided without the lines during " the war, are enabled to bring actions of trespass for " rent, &c. during their absence, against persons who " had occupied their premises, whether under the autho-

" rity or permission of the British commander or other-
" wise, and who by this act are precluded from plead-
" ing any *military order* whatsoever in justification of
" their occupancy. It also authorizes the sequestra-
" tion of the estates of British subjects lying in that
" country for their conduct during the war."

This charge (the last article excepted) is not without foundation, as will appear from a perusal of this extraordinary act. It is as follows:

An act for granting a more effectual relief in cases of certain trespass. Passed 17th March, 1783.

Be it enacted by the people of the state of New York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That it shall and may be lawful for any person or persons, who are or were inhabitants of this state, and who, by reason of the invasion of the enemy, left his, her or their place or places of abode, and who have not voluntarily put themselves respectively into the power of the enemy, since they respectively left their places of abode, his, her or their heirs, executors or administrators, to bring an action of trespass against any person or persons who may have occupied, injured or destroyed his, her or their estate, either real or personal, within the power of the enemy, or against any person or persons, who shall have purchased or received any such goods or effects, or against his, her or their heirs, executors or administrators, in any court of record within this state, having cognizance of the same; in which action, if the same shall be brought against the person or persons who have occupied,

injured or destroyed, or purchased or received such real or personal estate as aforesaid, the defendant or defendants shall be held to bail; and if any such action shall be brought in any inferiour court within this state, the same shall be finally determined in such court, and every such action shall be considered as a transitory action. That no defendant or defendants shall be admitted to plead, in justification, any military order or command whatever, of the enemy, for such occupancy, injury, destruction, purchase or receipt, nor to give the same in evidence on the general issue.

Your secretary has reason to believe that this is the first and only act of the kind that ever was passed by any legislature or sovereign. Neither the laws nor the practice of nations (as far as your secretary has knowledge of them) afford any countenance or colour to an opinion that after a war has been terminated by a treaty of peace solemnly made and ratified, either of the late belligerent powers or their respective citizens have a right to commence and prosecute actions at law against the soldiers, subjects or adherents of the other for damages by them done during the war, and in the course of invasions and hostilities by military order. Such an opinion appears to your secretary to be so destitute of even resemblance to reason, that a particular exposition of its demerits would be an unnecessary, and therefore an improper application of time and attention. In a word, this act is, in his opinion, a direct violation of the treaty of peace, as well as of the acknowledged laws of nations. But it is not true that this act does "authorize the sequestration of the estates of British subjects lying in this

"country for their conduct during the war," as the list of grievances very improperly asserts.

It is said that this act was confirmed by others in 1784 and 1785, but they are not described either by their titles or contents.

Your secretary finds one passed the 12th May, 1784, entitled "an act to preserve the freedom and indepen-"dence of this state, and for other purposes therein "mentioned," which in his opinion is very exceptionable. It is as follows:

Whereas it is of great importance to the safety of a free government, that persons holding principles inimical to the constitution should not be admitted into offices or places of trust, whereby they might acquire an immediate influence in the direction of its councils: and whereas some of the citizens of this state, entertaining sentiments hostile to its independence, have taken an active part in the late war, in opposition to the present government, and it would be improper and dangerous that such persons should be suffered to hold or enjoy any such office or place of trust within this state: and whereas it is the duty of the legislature to pursue every reasonable and proper measure to secure the government from being disturbed and endangered:

Be it therefore enacted by the people of the state of New York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That all and every person or persons, natives or others, who being resident in this state, or any other of the United States, on the ninth day of July, in the year of our Lord 1776, and who have at any time since the said ninth day of July, in the year of our Lord

1776, accepted, received, held or exercised any *military commission* or commissions whatsoever, by or under any authority derived from the king of Great Britain; and every person or persons who being resident within this state, or any other of the United States as aforesaid, on the ninth day of July, 1776, aforesaid, who have owned or fitted out, or have been concerned in fitting out any privateer or privateers, or vessels of war, to cruise against or commit hostilities upon the vessels, property and persons of any of the citizens of the United States, or against their allies; and every person or persons whatsoever, who being resident in this state, or any other of the said United States, on the ninth day of July, in the year of our Lord, 1776, aforesaid, who have served on board such privateers or vessels of war, in the condition or capacity of captain, lieutenant or master; and also every person or persons who being resident in this state, or any other of the United States, on the ninth day of July, 1776, aforesaid, and who since that time have accepted, held or exercised any office, commission or appointment, in the board or boards of police, instituted and established in the southern district of this state during the late war, by virtue of, and under authority derived from the king of Great Britain; and also every person or persons whatsoever, who being resident in this state, or any other of the United States, on the ninth day of July, in the year 1776, aforesaid, and who since that time have accepted, received, held or exercised any office, commission or appointment whatsoever, in the court of admiralty instituted and established in the southern district of this state,

during the late war, by virtue of authority derived from the king of Great Britain as aforesaid; and also all and every person or persons whatsoever, who being resident in any of the United States, except this state, on the ninth day of July, 1776, aforesaid, and who at any time since that day and during the late war, have fled or removed from such of the said states, of which such person or persons were respectively resident on the ninth day of July aforesaid, and who have gone over to, joined, or put himself or themselves under the power and protection of the fleet or armies of the king of Great Britain aforesaid; and all and every person and persons who being resident in this state on the ninth day of July, 1776, aforesaid, and who since that day have voluntarily gone over to, remained with, or joined the fleets and armies of the king of Great Britain aforesaid, at any time during the late war, who has or have left this state on or before the 10th day of December, in the year of our Lord, 1783, and who have not returned, and who shall hereafter be found within this state; such person or persons so found, shall be, on conviction thereof, adjudged guilty of misprision of treason.

Provided always, that nothing in this act contained shall be taken or deemed to affect any person who at the time of committing any of the offences aforesaid, was a minor under sixteen years of age, or a person insane.

And provided also, that it shall and may be lawful for any such person or persons, whose estates respectively may be attached by any law of this state, and advertisement made thereof agreeable to such law, to

come and remain within this state for so long a time as may be absolutely necessary to defend his, her or their suit; any thing in this act to the contrary thereof in any wise notwithstanding.

And be it further enacted by the authority aforesaid, That all and every person or persons falling under any of the descriptions herein beforementioned, and the descriptions mentioned in the twelfth section of the act entitled, "An act to regulate elections within "this state," passed the 27th day of March, 1778, and who has or have not left this state, are hereby for ever disqualified and rendered incapable of holding, exercising or enjoying any legislative, judicial or executive office or place whatsoever within this state, and shall and hereby is and are for ever disqualified and incapacitated to elect or vote, either by ballot or viva voce, at any election to fill any office or place whatsoever, within this state; and if any person shall offer himself as an elector, at any election hereafter to be holden for an office or place within this state, and shall be suspected of, or charged to be within any of the descriptions aforesaid, it shall be lawful for the inspectors or superintendents (as the case may be) to inquire into and determine the fact whereof such person shall be suspected, or wherewith he shall be charged as the cause of disqualification aforesaid, on the oath of one or more witness or witnesses, or on the oath of the party so suspected or charged, at their discretion; and if such fact shall, in the judgment of the inspectors or superintendents, be established, it shall be lawful for them, and they are hereby required to reject the vote of such persons at such election.

Provided always, that if it shall appear to the satisfaction of the inspectors or superintendents at any election, that any person offering himself as an elector, has during the late war, within the southern district, by fear or compulsion, accepted, held or exercised any such office, commission or appointment, or may have involuntarily done any act or acts which by the said section would have disqualified him from holding any office, or from being an elector, had the same been voluntarily done, and that such person otherwise has uniformly behaved as a friend to the freedom and independence of the United States, the inspectors shall admit such person to give his vote at any such election, any thing in this act to the contrary notwithstanding.

Whereas a very respectable number of citizens of this state, well attached to the freedom and independence thereof, have entreated the legislature to extend mercy to persons hereinafter mentioned, and to restore them to their country:

Be it therefore enacted by the authority aforesaid, That Gysbert Marselius, Henry Staats, John Stevenson, Henry Vandyck, John Vanallen, Henry Vanschaack, David Vanschaack, Harman Pruyn, William Rea, Myndert Viele, William Lupton, Cadwallader Colden, Walter Dubois, Cornelius Luyster, Andrew Graham, John Thurman, Samuel Fowler, Joseph Mabbit, John Green, Dirck Vanvlect, Jost Garrison, John Booth, Rolef Etting, Solomon Etting, Richard Harrison, James Smith and Benjamin Lapham, shall be, and every of them are hereby permitted to return to, and reside within this state, without any molestation, and therein to remain until the end of the

next meeting of the legislature, or until further legislative provision shall be made in the premises, any thing in the act entitled, "an act more effectually to "prevent the mischiefs arising from the influence and "example of persons of equivocal and suspected "characters in this state," passed the 30th day of June, 1778, to the contrary thereof in any wise notwithstanding.

This intemperate act was passed after the treaty had been ratified by both nations, and most clearly violates the sixth article in various respects too obvious and decided to require enumeration or discussion.

Your secretary has reason to believe that there are some other acts not particularized in the list of grievances, which, on being compared with the treaty, would appear in some respects inconsistent with it; but as the principles applied by this report to the other acts, will also apply to all of the like kind, he thinks the investigation may here be concluded with propriety.

From the aforegoing review of the several acts complained of, it is manifest, that the fourth and sixth articles of the treaty have been violated by certain of them.

The next inquiry in order seems to be, Whether these violations can be justified or excused by any prior ones on the part of Britain?

There is no doubt but that Britain has violated the seventh article, which provides "that his Britannick "majesty shall with all convenient speed, and without "causing any destruction, or carrying away any ne-"groes, or other property of the American inhabitants, "withdraw all his armies, garrisons and fleets from the

"said United States, and from every post, place and "harbour within the same."

The violations of this article alluded to, are these, viz.

1. That on the evacation of New York, negroes belonging to American inhabitants were carried away.

2. That his Britannick majesty's garrisons have not been withdrawn from, but still keep possession of certain posts and places within the United States.

With respect to the negroes, it may be proper to distinguish them into *three* classes.

1. Such as in the course of the war were captured and disposed of as booty by the enemy.

2. Such as remained with and belonged to American inhabitants within the British lines.

3. Such as, confiding in proclamations and promises of freedom and protection, fled from their masters without, and were received and protected within, the British camps and lines.

The stipulation, "not to carry away any negroes or "other property of the American inhabitants," cannot in the opinion of your secretary be construed to extend to, and comprehend the *first* class. By the laws of war all goods and chattels captured and made booty *flagrante bello*, become the property of the captors. Whether men can be so degraded as under any circumstances to be with propriety denominated goods and chattels, and under that idea capable of becoming booty, is a question on which opinions are unfortunately various, even in countries professing christianity and respect for the rights of mankind. Certain it is that our laws assert, and Britain by this article as well

as by her practice admits, that man may have property in man. If so, it is fair reasoning to conclude that this like other moveable property is capable of changing owners by capture in war. The article places "negroes and other property of the American inhabi-"tants" on the same footing; so that if it means that captured negroes shall not be carried away, it must also mean that no other captured property shall be carried away, which would in other words amount to an agreement that the British fleet and army should leave behind all the booty then in this country, which they had taken from American inhabitants at any period of the war. It would be a task beyond the abilities of your secretary to raise such a construction of the article on any principles capable of supporting it.

As to the *second* class, to wit, such as belonged to and remained with American inhabitants within the British lines, they seem clearly to be within the design and meaning of the article; for as the enemy had never taken them from their masters, nor treated them as booty, the property remained unchanged; and the like reasoning applies to all other negroes kept as slaves within their lines, and respecting whom the enemy had done no act which divested their masters of the property.

Your secretary also thinks that the *third* class are clearly comprehended in the article, and for the same reason, viz. because they still remained as much as ever the property of their masters. They could not by merely flying or eloping extinguish the right or title of their masters; nor was that title destroyed by their coming into the enemy's possession, for they *were*

received, not taken by the enemy; they were received not as slaves but as friends and freemen; by no act, therefore, either of their own or of their friends, was the right of their masters taken away; so that being the property of American inhabitants, it was an infraction of the seventh article of the treaty to carry them away.

Whenever the conduct of nations or of individuals becomes the subject of investigation, truth and candour should direct the inquiry. The circumstances under which these last mentioned negroes were carried away make a strong impression on the mind of your secretary, and place that transaction before him in a point of view less unfavourable to Britain than it appears in to his countrymen in general. He is aware he is about to say unpopular things; but higher motives than personal considerations press him to proceed.

If a war should take place between France and Algiers; and in the course of it France should invite the American slaves there to run away from their masters, and actually receive and protect them in their camp, what would Congress, and indeed the world, think and say of France, if, on making peace with Algiers, she should give up those American slaves to their former Algerine masters? Is there any other difference between the two cases than this, viz. that the American slaves at Algiers are *white* people, whereas the African slaves at New York were *black* people?

It may be said that these remarks are made out of season; for whether they be well or ill founded, the fact is, that Britain expressly agreed to give them up, and therefore ought to have done it.

How far an obligation to do wrong may, consistent with morality, be so modified in the execution as to avoid doing injury, and yet do essential justice, merits consideration. By this agreement Britain bound herself to do great wrong to these slaves; and yet by not executing it she would do great wrong to their masters. This was a painful dilemma; for, as on the one hand, she had invited, tempted and assisted these slaves to escape from their masters, and on escaping had received and protected them, it would have been cruelly perfidious to have afterwards delivered them up to their former bondage, and to the severities to which such slaves are usually subjected; so on the other hand, after contracting to leave these slaves to their masters, then to refuse to execute that contract, and in the face of it to carry them away, would have been highly inconsistent with justice and good faith. But one way appears to your secretary in which Britain could extricate herself from these embarrassments, that was, to keep faith with the slaves by carrying them away, and to do substantial justice to their masters by paying them the value of those slaves. In this way neither could have just cause to complain; for although no price can compensate a man for bondage for life, yet every master may be compensated for a runaway slave.

In the opinion therefore of your secretary, Great Britain ought to stand excused for having carried away these slaves, provided she pays the full value of them; and on this he thinks the United States may with great propriety and justice insist. Indeed there is an inti-

mation in one of Mr. Adams's letters, that the British minister did not object to it.

But however capable of palliation the conduct of Britain respecting these negroes may be, it unquestionably was an infraction of the seventh article.

It is equally clear, that her continuing to hold the posts from which by that article she agreed to withdraw her garrisons, is also a decided violation of the treaty.

It appears, then, that there are violations of the treaty justly chargeable on both parties; but as the present inquiry is, Whether our violations can be justified by antecedent ones on the part of Britain, their respective dates must be ascertained.

It is but just to observe, that Britain withdrew her fleet and army from New York before the treaty was ratified. She evacuated that place on the 25th November, 1783; and it was not until the next year that the treaty was ratified.

The first violation that (to the knowledge of your secretary) we complain of, happened when the British forces left New York; for they then carried away with them the negroes in question; so that the first violation on the part of Britain was on the 25th November, 1783.

The famous trespass act of New York was passed 17th March, 1783, and is still in force.

The act of Pennsylvania, which impeded the recovery of British debts, was passed 12th March, 1783.

The ordinance of South Carolina for disposing of certain estates, &c. was passed 17th March, 1783.

All these acts were in force on and long after the day of the date of the treaty, viz. 3d September, 1783.

In whatever light, therefore, deviations from the treaty prior to its final conclusion and ratification may be viewed, it is certain that deviations on our part preceded any on the part of Britain; and therefore instead of being justified *by* them, afford excuse *to* them.

As to the detention of our posts, your secretary thinks that Britain was not bound to surrender them until we had ratified the treaty. Congress ratified it 14th January, 1784, and Britain on the 9th April following. From that time to this, the fourth and fifth articles of the treaty have been constantly violated on our part by legislative acts then and still existing and operating.

Under such circumstances, it is not a matter of surprise to your secretary that the posts are detained; nor in his opinion would Britain be to blame in continuing to hold them until America shall cease to impede her enjoying every essential right secured to her, and her people and adherents, by the treaty.

Your secretary has heard another reason or excuse assigned to justify deviating from the fourth article, and restraining British creditors in the recovery of their debts, viz. that by giving time to the debtor, he became more able to pay the debt; and as that additional ability was a benefit to the creditor, the latter ought not to complain of the restraint which produced it.

Although this argument may be somewhat ingenious, it unfortunately proves too much. By the treaty a British creditor has a right to sue when he pleases;

and by the common law a farmer has a right to plough when he pleases, a merchant to send out his vessels when he pleases, and every man to eat and drink when he pleases.

Admit that a British creditor would do better to delay his suits, that a farmer was about to plough in an improper manner or season, that a merchant had ordered his vessels to sea when a hurricane was expected, or that a certain gentleman injured his health by intemperance; admit these facts; would it thence follow, that every or any good natured officious man, who might think himself more judicious and prudent, has a right to hinder the creditor from suing, the farmer from ploughing, the merchant from despatching his vessels, or the *bonvivant* from indulging his appetite? Surely not.

In short, as your secretary is uninformed of any facts or matters that can justify the violations on our part, the only question which seems to remain to be considered is, What is to be done?

The United States in Congress assembled have neither committed, nor approved, of any violation of the treaty. To their conduct no exceptions are taken; but to their justice an appeal is made relative to the conduct of particular states. The United States must, however, eventually answer for the conduct of their respective members; and for that, and other reasons suggested by the nature of their sovereignty and the articles of confederation, your secretary thinks they have good right to insist and require that national faith and national treaties be kept and observed throughout the union; for otherwise it would be in the power of

a particular state, by injuries and infractions of treaties, to involve the whole confederacy in difficulties and war.

In his opinion it would highly become the dignity of the United States to act on such occasions with the most scrupulous regard to justice and candour towards the injured nation, and with equal moderation and decision towards the delinquent state or states.

In the present case he thinks it would be proper to resolve,

1. That the legislatures of the several states cannot of right pass any act or acts for interpreting, explaining or construing a national treaty, or any part or clause of it; nor for restraining, limiting or in any manner impeding, retarding or counteracting the operation or execution of the same; for that on being constitutionally made, ratified and published, they become, in virtue of the confederation, part of the law of the land, and are not only independent of the will and power of such legislatures, but also binding and obligatory on them.

2. That all *such* acts or parts of acts as may be now existing in either of the states, repugnant to the treaty of peace, ought to be forthwith repealed; as well to prevent their continuing to operate as violations of that treaty, as to avoid the disagreeable necessity there might otherwise be of raising and discussing questions touching their validity and obligation.

3. That it be recommended to the several states, to make such repeal rather by describing than reciting the said acts; and for that purpose to pass an act, declaring in general terms, that all such acts and parts of

acts repugnant to the treaty of peace between the United States and his Britannick majesty, or any article thereof, shall be and thereby are repealed; and that the courts of law and equity in all causes and questions cognizable by them respectively, and arising from or touching the said treaty, shall decide and adjudge according to the true intent and meaning of the same, any thing in the said acts or parts of acts to the contrary thereof in any wise notwithstanding.

The two first of these proposed resolutions do not appear to your secretary to require any comments.

He thinks the third would be expedient for several reasons:

As it is general, and points at no particular state, it cannot wound the feelings of any.

The general law it recommends he thinks preferable to a minute enumeration of the exceptionable acts and clauses, because either omissions might accidentally be made in the enumeration, or questions might be agitated, and perhaps improperly determined, respecting this or that act or clause which some may think exceptionable, and others not. By repealing in general terms, and obliterating all exceptionable acts and clauses as it were by one stroke of the pen, the whole business will be turned over to its proper department, viz. to the judicial; and the courts of law will find no difficulty in deciding whether any particular act or clause is or is not repugnant to the treaty. When it is considered that the judges in general are men of character and learning, that they stand in responsible situations, and feel as well as know the obligations of office and the value of reputation, there is reason to

presume that their conduct and judgments relative to these as well as other judicial matters will be wise and upright.

Your secretary also thinks, that in case these resolutions should be adopted, it would be proper that a circular letter from Congress should accompany copies of them to the states; but as the forming a draft or plan of such a letter, seems not to belong to the department of *foreign* affairs, he forbears to report one.

He is further of opinion, that a copy of this report should be transmitted to the minister plenipotentiary of the United States at the court of London for his information; and that he be instructed candidly to admit that the fourth and sixth articles of the treaty have been violated in America, as well as the seventh has on the part of Great Britain.

That he inform his Britannick majesty that the United States are taking effectual measures for removing all cause of complaint on their part.

That he also be authorized to propose and conclude, in the name and behalf of the United States, a convention with his majesty, whereby it shall be agreed, that the value of the negroes, or other American property carried away contrary to the seventh article, be estimated by commissioners, and paid for; and that the said payment, together with a surrender of all the posts and places now held by his majesty within the limits of the United States, shall be within months after all the acts and parts of acts existing in the several states, and which violate the treaty, are repealed, and due notice thereof given.

That he be also instructed to assure his majesty, that it will always give pleasure to Congress fairly and candidly to discuss and accommodate every difference or complaint that may arise relative to the construction or to the performance of the treaty. That they are determined to execute it with good faith; and that as this is the only instance in which any complaints of that kind have ever come regularly before them, they flatter themselves that the frankness and candour of their conduct on this occasion will create in him the same confidence in the purity of their intentions, which they repose in his assurance, "that whenever America shall manifest a real deter- "mination to fulfil her part of the treaty, Great Britain "will not hesitate to co-operate in whatever points "depend upon her for carrying every article into real "and complete effect."

It might also be well to instruct Mr. Adams to endeavour to have an article inserted in the convention for the remission of the interest, or a proportion of it, which became due on private contracts during the war; but your secretary apprehends, from the general and great impropriety of such interference with private contracts, that his endeavours would be fruitless.

He also thinks it might be proper to instruct Mr. Adams to obtain, if possible, an article to fix the true construction of the declaration for ceasing hostilities, and stipulating that compensation be made for all captures contrary to it; but he likewise fears that as this may be considered as a judicial question, and as the balance of the captures so circumstanced is in favour

of Britain, that her consent to such an article would not be easy to obtain.

It appears to your secretary that this system ought to give perfect satisfaction to the court of London, unless perhaps in one point, viz. that the individuals who have suffered by our violations are left without compensation for their losses and sufferings.

Although strict justice requires that they who have wrongfully suffered should as far as possible receive retribution and compensation, yet as it would be very difficult, if practicable, to prevail on the states to adopt such a measure, he thinks it best to be silent about it, especially as the United States have neither the power nor the means of doing it without their concurrence.

Besides, as the detention of the posts has been and continues injurious to the United States, the consequences of their respective violations may be set against each other; and although the account may not be exactly balanced, yet it cannot be well expected that in affairs of such magnitude, the same regard can be had to minutiæ as in transactions between individuals.

This report is on a subject no less new and singular than important. Your secretary is not conscious of any errours in it; and yet there may be some. He hopes the facts are not mistaken or misstated. He believes his reasoning on them to be just; and he flatters himself whatever mistakes relative to either may be discovered, that they will be treated with candour, and ascribed neither to want of attention, nor of care, but to

that fallibility, from which few, if any, even of the wisest and most able, are wholly exempt.

FEBRUARY 3, 1787.

A letter from the honourable J. Adams was read, informing that he had exchanged with the baron Thulemeier the ratifications of the treaty between the United States of America, and enclosing the ratification thereof by his Prussian majesty.

The secretary for foreign affairs, to whom was referred a letter to Congress, dated 9th July, 1786, from his most christian majesty, on the birth of his daughter, reported the draft of an answer, which was agreed to as follows:

GREAT, FAITHFUL AND BELOVED FRIEND AND ALLY,

We have received the letter which you did us the honour to write on the 9th July last.*

* TRES CHERS GRANDS AMIS ET ALLIES,

Nous sommes bien convaincus que vous partagerez la satisfaction que nous cause l'heureuse delivrance de la Reine notre tres chere épouse qui vient de mettre au monde une princesse; l'entiere confiance que nous mettons dans les sentimens dont nous nous flattons que vous nous renouvellere les temoignages en cette occasion, vous repond du désir que nous aurons toujours de vous donner de plus en plus des preuves de notre affection, et de notre constante amitié pour vous. Sur ce nous prions Dieu qu'il vous ait, trés chers grands amis et allies en sa sainte et digne garde.

Votre bon ami et allié.

Fait à Versailles le 9 Juillet, 1786.

LOUIS.

GRAVIER DE VERGENNES.

We participate very cordially in the satisfaction which your majesty derives from the birth of a princess, and rejoice in every event which adds to the prosperity of your people and the welfare of your royal family. We present to your majesty and the queen our congratulations on the occasion. We assure you of our unceasing gratitude and attachment; and we pray the Almighty always to keep your majesty, your people and family in his most holy protection.

Done at New York, the 3d day of February, in the year of our Lord, 1787. By the United States in Congress assembled.

(Signed) ARTHUR ST. CLAIR, President.

The secretary for foreign affairs, to whom was referred a letter of the 27th June,* from the honourable

* London, June 27, 1786.

SIR,

The chevalier de Pinto, the envoy of Portugal, informed me this day, that he had received instructions from his court to inform me, that the queen his mistress has sent a squadron to cruise in the mouth of the Straits, with orders to protect all vessels belonging to the United States of America equally with those of her own subjects; and that she would continue those orders as long as they should be agreeable to Congress.

The reply was, That it could not be doubted that so signal a mark of her majesty's friendly attention to the interest and safety of the citizens of America, would be very agreeable to Congress, and that the first opportunity should be embraced to make the communication to them.

So much notice will probably be taken of this by Congress, as to return the compliment; the least is thanks.

J. Adams, reported the draft of a letter to the queen of Portugal, which was agreed to as follows:

GREAT AND GOOD FRIEND,

We take the earliest opportunity, since our annual election, of presenting to your majesty our sincere acknowledgments for the friendly regard you have manifested for us, in having ordered your squadron in the straits to protect our vessels equally with those of Portugal.

Permit us to assure you, that we shall retain this mark of generous attention in grateful remembrance; and shall omit no opportunity of testifying our desire to establish and perpetuate between our two countries an intercourse of commerce and good offices, which may prove no less beneficial than agreeable to both. We pray God to bless and preserve your majesty.

Done by the Congress of the United States, convened at the city of New York, the 3d day of February, in the year of our Lord, 1787.

(Signed) ARTHUR ST. CLAIR, President.

The secretary for foreign affairs having with the foregoing draft reported as follows:

As this communication was made by the queen's envoy in London to Mr. Adams, your secretary thinks this letter should be transmitted to him; and that the compliment would be more delicate if his secretary was commissioned to carry and deliver it. Perhaps too, so striking a proof of respect might, among other good consequences, promote the conclusion of the treaty: Thereupon,

Ordered, That the secretary for foreign affairs take order for the transmission of the letter to the queen of Portugal, when signed by the President, in the manner suggested in his report.

Office for Foreign Affairs, January 31, 1787.

The secretary of the United States for the department of foreign affairs, to whom was referred a letter of 23d April last, from Mr. Dumas, together with the papers that accompanied it, reports,

That there is but one circumstance mentioned in the said letter and papers, on which it appears to him necessary to report, viz.

That his most christian majesty had conferred upon Mr. Dumas a pension of one thousand five hundred livres a year for life, and of half of that sum after his death on his daughter; to accept of which he requests the permission of Congress.

As Mr. Dumas has in fact no commission from the United States, your secretary doubts the propriety of giving such *express* permission, because to *permit* implies a right to *forbid*. He nevertheless thinks it would be proper to authorize him to inform Mr. Dumas, that this mark of his majesty's generous attention to him gives pleasure to Congress, and that they have not the least wish that he should decline to accept and enjoy it.

Ordered, That the above report be referred to the secretary for foreign affairs to take order, in writing to Mr. Dumas as suggested.

Office for Foreign Affairs, January 17, 1287.

The secretary of the United States for the department of foreign affairs, to whom was referred three letters from sir Edward Newenham, of the kingdom of Ireland, one to his excellency the President, dated 12th August last, another to his excellency the President and members of Congress of the same date, and the third to your secretary, which is also of the same date, reports,

That the object of these letters is to obtain for his son, Robert O'Callaghan Newenham, the appointment of consul of the United States at Marseilles, in France, where he is settled and established in the mercantile line. Sir Edward represents his son as well qualified for that place, and supports his application by referring to his own steady attachment to the American cause.

Your secretary reports, as a fact generally known, and particularly confirmed by the testimony of doctor Franklin and others, that sir Edward was always a firm friend to the American cause, and rendered many substantial services to our countrymen that happened to be prisoners in Ireland: that therefore he merits the attention of the United States, and should on every proper occasion receive marks of it.

That on the 16th day of March, 1784, Congress was pleased to resolve "that it is inconsistent with "the interest of the United States to appoint any per- "son not a citizen thereof to the office of minister, "charge des affaires, consul, vice consul, or to any "other civil department in a foreign country," &c.

This act renders a compliance with sir Edward's

request impossible, unless Congress should think proper to repeal it *partially* or *altogether*.

There are few human laws or institutions from which some inconveniences will not result. The act in question appears to your secretary to be a wise one, and consequently that it should remain as it is.

From sir Edward's letters it seems, that the honour of this appointment weighs more with him than the emoluments expected from it, and he probably would be equally pleased with any other honourable mark of the notice of Congress.

It is well known that other British subjects of rank and distinction have been very friendly to the American cause besides sir Edward, and therefore the propriety and policy of honouring him and neglecting the rest merits consideration.

Your secretary thinks that states as well as individuals should remember those who took their part in adversity, and that the first use to be made of subsequent prosperity should be to reward them by proper manifestations of gratitude. Such conduct never fails to secure old friends as well as to invite new ones; besides, it is right in itself, and therefore unquestionably politick. Our constitution has provided government with very few of those feathers, which in other countries cost sovereigns so little, and yet afford them ample means of rewarding the many who are ambitious of embellishing their merits by such toys and trifles.

Honorary and commendatory resolutions, a few offices, very little money, and much land, are the only funds from which Congress can draw rewards for their friends and faithful servants.

The first, unless used with caution and reserve, will

depreciate and cease to be valuable. The second should in the opinion of your secretary be as much as possible confined to their own citizens. The third is at present out of question; but on considering the state of the latter, your secretary is inclined to think, that some plan like the following might be useful.

Certain individuals, French, British and Dutch, were in the course of the war eminently useful to America. Their names and merits are known.

Let a district of country proper in future to become a state, easy of access, and convenient *now* to settle, be marked out and subdivided into counties of thirty miles square. Give to these counties, or to as many as occasion may require, the names of our most eminent and distinguished foreign friends, whether French, British, or Dutch. Subdivide the counties into townships of six miles square. Give to these townships the names of others, and give acres to each of them in fee.

Let the commissioners of the land office be also directed to give five hundred acres to such other of our foreign friends, as, though less distinguished, may nevertheless be found to have well deserved the notice of Congress. Declare that these lands shall not be transferable, unless to American citizens, and that at the expiration of twenty years, unless one family be then found settled on each grant, it shall revert to Congress.

Such an act might be introduced by a preamble no less honourable to the gratitude of the United States than pleasing to the objects of it and to others.

As to the request of sir Edward, your secretary thinks it would be well that he should be directed to

write him a letter, informing him that Congress are well informed of his character and attachment to the liberties of America, and that it would give them pleasure to manifest the esteem they entertain for him by complying with his request, were they not restrained by a law confining their appointment of consuls to citizens.

Ordered, That the last paragraph of the above report be referred to the secretary for foreign affairs to take order.

MARCH 13, 1787.

On a report of the secretary for foreign affairs to whom was referred a letter of the 20th February, 1787, from J. M. Pintard,

Resolved, That a commercial agent to reside at the port of Lisbon be appointed, who shall not be entitled to receive any salary, fees or emoluments of office.

Ordered, That Monday next be assigned for the election of the said commercial agent.

MARCH 21, 1787.

On the report of the secretary to the United States for the department of foreign affairs, to whom was referred a letter of the 4th March, 1786, from Mr. J. Adams, minister plenipotentiary of the United States of America at the court of London, together with the memorial of the said minister dated the 30th November, 1785, and presented by him on the 8th of December following to his Britannick majesty's secretary of state, and the answer received by Mr. Adams to the

said memorial, and contained in a letter from the said secretary of state, dated at St. James's, February 28, 1786, and other papers accompanying the same,

Congress unanimously agreed to the following resolutions:

Resolved, That the legislatures of the several states cannot of right pass any act or acts for interpreting, explaining or construing a national treaty, or any part or clause of it; nor for restraining, limiting or in any manner impeding, retarding or counteracting the operation and execution of the same; for that on being constitutionally made, ratified and published, they become in virtue of the confederation, part of the law of the land, and are not only independent of the will and power of such legislatures but also binding and obligatory on them.

Resolved, That all such acts or parts of acts as may be now existing in any of the states repugnant to the treaty of peace ought to be forthwith repealed, as well to prevent their continuing to be regarded as violations of that treaty as to avoid the disagreeable necessity there might otherwise be of raising and discussing questions touching their validity and obligation.

Resolved, That it be recommended to the several states to make such repeal rather by describing than reciting the said acts, and for that purpose to pass an act declaring in general terms that all such acts and parts of acts repugnant to the treaty of peace between the United States and his Britannick majesty, or any article thereof, shall be and thereby are repealed; and that the courts of law and equity in all causes and questions cognizable by them respectively, and arising from, or touching the said treaty, shall decide and

adjudge according to the true intent and meaning of the same, any thing in the said acts or parts of acts to the contrary thereof in any wise notwithstanding.'

MARCH 30, 1787.

Ordered, that the papers presented by the delegates of North Carolina, touching goods seized at the Natchez, and also papers transmitted by the executive of Virginia and laid before Congress by the delegates of that state on the 28th, be referred to the secretary for foreign affairs to report.

APRIL 4, 1787.

Ordered, That the secretary for foreign affairs give information to Congress of the state of his negotiation with the encargado de negocios of Spain, and that an actual state of that business be laid before Congress.

APRIL 13, 1787.

The secretary for foreign affairs having in obedience to the order of the 4th reported a state of his negotiation with the encargado de negocios of Spain, the same was read as follows:

Office for Foreign Affairs, April 11, 1787.

SIR,

In obedience to the order of Congress directing me to give information of the state of my negotiation with the encargado de negocios of Spain, &c. I have the honour of informing your excellency that on the 6th October last I wrote the following letter to Mr. Gardoqui, viz.

Office of Foreign Affairs, October 6, 1786.

Sir, The letter you did me the honour to write the 25th May last was immediately laid before Congress. The subjects of your negotiation have frequently since engaged their attention and consideration; and I have now the pleasure to inform you, that in consequence of some recent acts I find myself more in capacity than I was, to make and receive propositions relative to certain matters in difference between our countries. I shall be happy if our negotiations should be so fortunate as to terminate in a treaty satisfactory to both.

As soon as some business which I must immediately despatch shall be completed, which will be in the course of a few days, it will give me pleasure to renew our conferences, and I will do myself the honour of giving you notice of it without delay.

With great consideration and esteem I have the honour to be, &c. (Signed) John Jay.

Sen'r Don Diego de Gardoqui, Encargado de Negocios of his Catholick Majesty.

That I have since had several conferences with Mr. Gardoqui on the well known points in difference between us, viz. on the navigation of the river Mississippi, and on the limits.

With respect to the first point we have had repeated conversations which produced nothing but debate, and in the course of which we did not advance one single step nearer to each other. He continued and still

continues decided in refusing to admit us to navigate the river below our limits on any terms or conditions; nor will he consent to any article *declaring our right in express terms, and stipulating to forbear the use of it for a given time.* But he did not appear to me so decidedly opposed to the same ideas in the way of *implication*, though he did not say so. I drew that inference from a number of circumstances, but yet he said nothing so unequivocal to warrant it, as to commit himself. I thought it therefore advisable to try how far he would silently yield to that idea; and therefore drew up articles in a variety of shapes, clearly implying the right, and expressly forbearing the use during the term of the treaty. These drafts he positively refused to admit; and finding that arguments in support of them rather irritated than convinced him, we parted without doing any thing. Subsequent conferences took place, and he continuing inflexible in refusing the articles as they stood, we gradually but very cautiously talked of amendments. It was my business to endeavour to change the *dress*, but retain the *spirit and sense.* Many difficulties and questions unnecessary to detail, occurred. It was however finally so adjusted as in my opinion to save the *right*, and only suspend the *use* during the term of the treaty; and at the expiration of which this and every other article in it would become null and void. It is as follows, viz.

"And to the end that this treaty may the more ef-
"fectually provide for the continuance of that perfect
"harmony which at present happily subsists between
"his catholick majesty and the United States; and
"that all differences and questions which might other-

" wise arise respecting the navigation of the river " Mississippi may be avoided and obviated by an ami- " cable stipulation on that subject; as his catholick " majesty's system of government and policy prohibits " all foreign trade, intercourse, and commerce within " his territories; and as the United States are desirous " as far as possible to meet the wishes of his majesty. " and to evince the sense they entertain of his friend- " ly disposition toward them, and of the recent proofs " he has been pleased to give them of it: therefore " it is expressly stipulated and concluded, that his ca- " tholick majesty and the United States are freely, and " in common, and without receiving any interruption " from each other, to use and navigate the said river " from its source down to the southern boundary of the " said states; and that the United States will faithfully " observe that limitation, and not navigate or use the " said river below, or further down than the said boun- " dary in any part of its course therefrom through his " majesty's countries to the mouth thereof."

Congress will doubtless observe, that the reasons assigned in this article for forbearance, militate against a supposition of his majesty's having an exclusive right; for it does not either admit *his* right or relinquish *ours*, but on the contrary, in order to avoid and obviate differences and questions, to suit his majesty's system of government and policy, to meet the king's wishes, and to evince our sense of his friendship, it only stipulates *not to use*, &c.

On that and every other occasion I thought it best to be very candid with Mr. Gardoqui. I told him he must not conclude that what I might think expedient

would also be deemed so by Congress, and hoped that when he considered they were sitting in the same place with us, he would see the propriety of my observing the greatest delicacy and respect towards them.

As to the limits, I have reason from him to believe that notwithstanding the extent of their claims, he would, in case all other matters were satisfactorily adjusted, so far recede as to give up to us all the territories not comprehended within the Floridas as ascertained by our separate and secret article with Great Britain, of which I early perceived that he was well informed.

As he could not in any manner be drawn lower down than this line, it struck me that it would be prudent to confine if possible all questions of limits to the land between the two lines; and therefore hinted the expediency of settling the dispute so limited by commissioners. He expressed no reluctance to this; and I believe he has written for instructions on that point, but am not certain. He seemed very cautious of committing himself, and I cannot now say that he admitted our right to extend down to the first line, but only gave me to understand that, all other things being agreed, his majesty from motives of accommodation might be content with that limitation.

These are the facts, and so matters at present stand between him and me. A variety of circumstances and considerations, which I need not mention, render this negotiation dilatory, unpleasant and unpromising; and it is much to be wished that the United States could jointly and unanimously adopt and pursue some fixed and stable plan of policy in regard to Spain, espe-

cially during the residence of Mr. Gardoqui, who I do verily believe is sincerely disposed to do every thing useful and acceptable to America, that his instructions and the essential interests of his country, as understood by him and his master, will permit.

I have the honour to be, &c.

(Signed) JOHN JAY.

His Excellency the President of Congress.

The following report from the secretary for foreign affairs was also read:

Office for Foreign Affairs, April 12, 1787.

The secretary of the United States for the department of foreign affairs, to whom was referred certain papers communicated to Congress by the honourable the delegates of Virginia* and North Carolina,† reports,

That he presumes the design of Congress in referring these papers to him was, that he should report only on such matters stated in them as respect foreign affairs.

It appears from the act of the council of Virginia of 28th February last, "that general Clarke hath made "a seizure of Spanish property without any authority "for such an act," and that the executive of that commonwealth hath with great propriety directed such steps to be taken "as may subject to punishment all

* See page 305. † See page 323.

"persons guilty in the premises." They also ordered a copy of the act to be sent to their delegates, that they might, if it should seem expedient, acquaint the minister of his catholick majesty with the sentiments of the executive expressed in it.

From the temper visible in some of the papers sent from the western country, as well as from the intelligence they convey, your secretary apprehends that the period is not distant when the United States must decide either to wage war with Spain, or settle all differences with her by treaty, on the best terms in their power. But as his sentiments on this head have already been candidly and explicitly submitted to Congress, a repetition of them would be improper, because unnecessary.

He thinks that on the present occasion the following resolutions would be advisable, viz.

Resolved, That the United States in Congress assembled learn with concern and *displeasure*, that certain citizens of the commonwealth of Virginia have, in violation of the laws of nations, and of the peace and dignity of that state and of the United States, violently seized the property of certain subjects of his catholick majesty at fort St. Vincennes.

Resolved, That Congress approve of the act of the executive of Virginia, directing proper measures to be immediately taken for punishing the offenders. And further, that the secretary at war be and he is hereby directed, to order the commanding officer of detachments in the western country to afford the government of Virginia such aid as the governour may from time to time require and specify, for keeping the peace,

and duly executing the laws of that commonwealth throughout its western jurisdiction; and further, that they be careful, on due proof, to apprehend and deliver to the government of Virginia, all such of the said offenders as may be in the dominions of the United States, without the proper limits of either of the states.

Resolved, That although no representations on this subject have as yet been made to Congress, by, or on the part of his Catholick majesty, yet as their ready attention to whatever may affect the friendship happily subsisting between him and them, will manifest the sincerity of their desire to maintain it, the secretary for foreign affairs be and he hereby is directed, to transmit copies of this and the aforegoing resolutions to the encargado de negocios of his catholick majesty now here, and also to the charge des affaires of the United States at Madrid.

It appears to your secretary to be most consistent with the principles of the confederation, and with the dignity of Congress, that individual states forbear to make formal representations or communications to foreign ministers or powers, but through and by means of the federal sovereign.

The papers communicated to Congress by the honourable the delegates of North Carolina,* show,

That on the 6th June, 1786, Thomas Amis, of that state, arrived at the Natchez on the Mississippi, with sundry articles of merchandise which he purposed to carry down, and out of the river; and that he was stopped, and his merchandise taken from him by the Spanish officer commanding there.

* See page 323.

It is well known that Spain will not permit our people to navigate that part of the river which runs through their countries, and such of them as make the experiment must expect consequences similar to those which Mr. Amis experienced.

Your secretary is convinced that the United States have good right to navigate the river from its source to and through its mouth; and unless an accommodation should take place, that the dignity of the United States and their duty to assert and maintain their rights, will render it proper for them to present a memorial and remonstrance to his catholick majesty, insisting on their right, complaining of its being violated, and demanding in a temperate, inoffensive, but at the same time in a firm and decided manner, that his majesty do cease in future to hinder their citizens from freely navigating that river, through the part of its course in question. Your secretary is further of opinion, that in case of refusal, it will be proper for the United States then to declare war against Spain. There being no reputable middle way between peace and war, it will be expedient to prepare without delay for the one or the other; for circumstances which call for decision seem daily to accumulate.

If Congress conceive that a treaty with Spain on terms proposed is eligible, the sooner such sentiments are communicated to your secretary the better. If an idea of obtaining better terms should be entertained, the sooner that question can be decided the better; and for that purpose your secretary thinks it would be well, either to place some other negociator in his stead, or to associate one or more persons with him in the

business. Any manner of conducting it most advantageous and most satisfactory to his country, will always be the manner most pleasing and agreeable to him.

With respect to prescribing a line of conduct to our citizens on the banks of the river, your secretary is embarrassed. If war is in expectation, then their ardour should not be discouraged, nor their indignation diminished. But if a treaty is wished and contemplated, then those people should be so advised and so restrained as that their sentiments and conduct may as much as possible be made to quadrate with the terms and articles of it. Your secretary cannot forbear to express his solicitude that this very important and consequential business may not be left in its present situation. The objects involved in it are of great magnitude; and effects must and will result from it, by which the prosperity of America will be either greatly advanced, or greatly retarded. He also takes the liberty of observing, that a treaty disagreeable to one half of the nation had better not be made, for it would be violated; and that a war disliked by the other half, would promise but little success, especially under a government so greatly influenced and affected by popular opinion.

[Papers referred to in the foregoing report. Page 301.]

[Virginia.] No. 1.

In Council, February 28, 1787.

The board resumed the consideration of several letters bearing date the 22d day of December, 1786, and addressed to the governour, from Danville, by Tho-

mas Marshall and others, which said letters with the enclosures had been laid before them on Saturday last.

The board lament that those despatches, pregnant as they are with subjects deeply interesting to our national character and quiet, and intended for the last assembly, should for the first time, on the fifth day of this instant, have been handed to the governour in Williamsburg, on his late journey to Norfolk on publick business.

From the respectability of the names subscribed to those letters, they confide in the following facts:

1. That the prosecution of the treaty proposed to be held with the Indians, under the authority of Congress, will tend to the safety of our western settlements.

2. That the success of the treaty would be forwarded by the appointment of some commissioners at least who are resident in the parts of the country likely to be exposed to the incursions of the savages.

3. That general Clarke has been and perhaps is now employed in levying recruits, in nominating officers, and in impressing provisions for the support of the post at Saint Vincennes; and

4. That general Clarke hath made a seizure of Spanish property without any authority for such an act.

The board therefore advise,

1. That copies of the letters aforesaid and their enclosures be forthwith transmitted to our delegates in Congress, with an earnest request to communicate them, in whole or in part, according to their discretion, immediately to that body, to urge the speediest

arrangements for a treaty to be holden with the Indians in April next, under the sanction of the federal government; and to propose as commissioners, general James Wilkinson, colonel Richard Clough Anderson, and colonel Isaac Shelby.

2. That it be notified to general Clarke, that this board disavow the existence of a power derived from them to the said Clarke to raise recruits, appoint officers, or impress provisions.

3. That as the seizure of Spanish property was never authenticated to this board before the receipt of the said letters, so had it been known at a period sufficiently early for prevention, it would have been prevented. But that this offence against the law of nations having been committed, it becomes the executive to declare their displeasure at the act, and to cause the national honour to be vindicated by the institution of legal proceedings against all persons appearing to be culpable. That the attorney general be consulted on the documents aforesaid, and requested to take himself, or to call upon the attorney general of Kentucky, as the case may require, to take such steps as may subject to punishment all persons guilty in the premises. That the said seizure of Spanish property be disclaimed by government in a special proclamation. That a copy of this order be also sent to our delegates, in order that they may, if it shall seem expedient, acquaint the minister of his catholick majesty with these sentiments of the executive. And that another copy be forwarded to Thomas Marshall, esquire, and the other gentlemen who concurred in the

letter aforesaid. All which several matters so advised, the governour orders accordingly.

Attest.

(Signed) A. Blair, C. C.

No. 2.

Danville, December 22, 1786.

SIR,

Whatever general impropriety there may be in a few private individuals addressing your excellency on subjects of publick nature, we cannot resist those impulses of duty and affection, which prompt us to lay before the honourable board at which you preside a state of certain unwarrantable transactions, which we are apprehensive may, without the seasonable interposition of the legislature, deeply affect the dignity, honour and interest of the commonwealth.

The testimonials which accompany this will give your excellency a general idea of the outrage which has been committed at post Saint Vincennes, of the illicit views of Mr. Green and his accomplices, and the negotiation which has taken place between general Clarke and the Wabash Indians.

We beg leave to add, that we have reason to believe property has been plundered to a very considerable amount, and that it has been generally appropriated to private purposes.

We are fearful that Green will find no difficulty in levying auxiliaries in the titular state of Frankland, and the settlements on Cumberland; in the mean time, attempts are daily practised to augment the banditti at Saint Vincennes, by delusive promises of lands.

bounty and clothing, from the officers appointed by general Clarke.

We beg leave to suggest to the serious consideration of your excellency, the necessity of carrying into effect the treaty proposed in April; for we fear, that the savages, when assembled, if they are not amused by a treaty, or kept in awe by a military force at Saint Vincennes, will form combinations among themselves hostile to this country; and before they disperse, may turn their arms against our scattered settlements in such force as to overwhelm them. To the superior wisdom and the paternal care of the heads of the commonwealth we take the liberty of submitting the matters herein mentioned, in full confidence, that every necessary measure will be immediately adopted. And have the honour to be, with every sentiment of respect, your excellency's most obedient,

T. Marshall,	Caleb Wallace,
George Muter,	John Craig,
Harry Innes,	Chris. Greenup,
Edmund Lyne,	James Garrard,
Richard C. Anderson,	Charles Ewing,
Richard Taylor,	John Logan,
James Wilkinson,	John Edwards.
J. Brown,	

A copy. Attest.

(Signed) Sam. Coleman, A. C. C.

No. 4.

The deposition of Daniel Neeves, being first sworn on the holy evangelists of Almighty God, deposeth and

saith, That he this deponent was enlisted by a captain Thomas Mason, as a soldier in the Wabash regiment; that he was summoned as one of a guard by a captain Valentine T. Dalton, and was by him marched to a store; and he the said Dalton by an interpreter demanded of a Spanish merchant to admit him the said Dalton into his cellar. The Spaniard asked what he wanted. The said Dalton answered, he was sent by the commanding officer to search his cellar. It being at a late hour of the night the Spaniard lighted a candle and opened his doors, and went and opened his cellar door. The said Dalton with several others entered the cellar; after some time he came out, and placed this deponent as a guard over the cellar, and took the rest of the guard to another store. That the succeeding day the said Dalton came with a number of others and plundered the cellar of a large quantity of peltry, wine, taffy, honey, sugar, tea, coffee, cordial, French brandy, and sundry other articles, together with a quantity of dry goods, the particular articles this deponent doth not at present recollect; that part of the goods was made use of to clothe the troops, the remainder with the other articles was set up at publick auction and sold; that the sale was conducted by a certain John Rice Jones, who marched in the militia commanded by general Clarke as a commissary general. And further this deponent saith, that he obtained a furlough, dated the 24th day of November, 1786, signed Valentine Thomas Dalton, captain commandant Onabache regiment, of which the following is a copy: "Daniel Neeves, a sol-"dier in the Onabache regiment, has liberty to go on "furlough for two months from the date hereof; at the

" expiration he is to return to his duty, otherwise look-
" ed upon as a deserter. November 24, 1786. Va-
" lentine Thos. Dalton, captain commandant Onabache
" regiment. To all whom it may concern." And fur-
ther the deponent saith not.

DANIEL NEEVES.

The above deposition was sworn to before me this 20th day of December, 1786.

CHRISTOPHER GREENUP.

A copy: Test.

(Signed) SAMUEL COLEMAN, A. C. C.

No. 5.

A committee, appointed to wait on general Clarke, and receive from him such information as he thought proper to make respecting the establishment of the corps at port St. Vincennes, of the seizure of Spanish property made at that place, and such other matters as they might think necessary, report,

That they find by inquiry from general Clarke, and sundry papers by him submitted to their inspection, that a board of field officers composed from the corps employed on the late Wabash expedition, did in council held at post St. Vincennes, the 8th of October, 1786, unanimously agree that a garrison at that place would be of essential service to the district of Kentucky, and that supplies might be had in the district more than sufficient for their support, by impressment or otherwise, under the direction of a commissary to be appointed for this purpose, pursuant to the authority vested in the field officers of the district by the

executive of Virginia. The same board appointed Mr. John Craig, jun. a commissary of purchases; and resolved that one field officer and two hundred and fifty men, exclusive of the company of artillery to be commanded by captain Valentine Thomas Dalton, be recruited to garrison post St. Vincennes. That colonel John Holder be appointed to command the troops in this service.

In consequence of these measures it appears to your committee that a body of men have been enlisted and are now recruiting for one year; that general Clarke hath taken the supreme direction of the corps, but by what authority doth not appear; and that the corps hath been further officered by appointments made by general Clarke, who acknowledges that the seizure of the Spanish property was made by his order for the sole purpose of clothing and subsisting the troops; and that the goods seized were appropriated in this way. That John Rice Jones, who acts as commissary to the garrison, had passed receipts for the articles taken. The general alleges that the troops were raised for the security of the district; that he considers them subject to the direction of this committee, who may discharge them if they think proper, but conceives this measure may prevent the proposed treaty, and involve this country in a bloody war. He denies any intention of depredating on the Spanish possessions or property at the Illinois; and declares that he never saw the intercepted letter from Thomas Green. That he understood Green's object was to establish a settlement at or near the Gaso river, under the authority of the state of Georgia; that his view was by encouraging the settlement to obtain a small grant of land, and that he

had no idea of molesting the Spaniards, or of attending Green in person. He informed the committee that the garrison now at post St. Vincennes is about one hundred strong, and that the merchants at the Illinois had determined to support it, for which purpose they had sent for the commissary Jones to receive provisions. That major Bussaroon was sent to the Illinois to advise the settlers there of certain seizures made at Natchez, of American property, by the Spanish commandant, and to recommend it to them to conciliate the minds of the Indians, and be prepared to retaliate any outrage the Spaniards might commit on their property, but by no means to commence hostilities.

A copy. THOMAS TODD, Clk. Com.

A copy. Test.

SAMUEL COLEMAN, A. C. C.

No. 6.

Extracts of general Clarke's speeches to the different nations of Indians on the Wabash, and their answers, in October, 1786.

GENERAL CLARKE.

"I send you to day some strings of white, inviting "you with sincerity to come to a grand council which "will be held at Clarkesville, of the 20th November "next, to see if we can come to terms, and make a "treaty of peace and friendship," &c.

THE GOOSE AND FUSIL.

" My elder brother, Thou oughtest to know the place " we have been accustomed to speak at, it is at post " St. Vincennes, there our chiefs are laid, there our an- " cestor's bed is and that of our father the French, and " not at Clarkesville where you required us to meet " you; we don't know such a place, but at post St. " Vincennes where we always went when necessary to " hold councils. My elder brother, thou informest me " I must meet you at the place I have mentioned, yet " thou seest, my brother, that the season is far ad- " vanced, and that I would not have time to invite my " allies to come to your council, which we pray to " hold at post St. Vincennes," &c.

THE LOON.

" My elder brother, Thou invitest us to a grand coun- " cil at Clarkesville; we don't know that place; it is " at post St. Vincennes that our fathers used to go to " speak, and we hope you will not refuse it to us, that " place being the bed of our ancestors and of monsieur " de Vincenne. In the spring of the year we will re- " pair at your pleasure to post St. Vincennes," &c.

GENERAL CLARKE.

" I propose the last of April for the grand council " to be held at this place (St. Vincennes) where I ex- " pect all those who are inclined to open the roads

" will appear, and we can soon discover what the Deity " means."

Copied from General Clark's Papers by
HARRY INNES.

A Copy. Test.

SAMUEL COLEMAN, A. C. C.

No. 7.

Louisville, Falls of Ohio, December 23, 1786.

HONOURED AND RESPECTED SIR,

Since I had the pleasure of writing my last, many circumstances of alarming nature have turned up to view. The commercial treaty with Spain is considered to be cruel, oppressive and unjust. The prohibition of the navigation of the Mississippi has astonished the whole western country. To sell us and make us vassals to the merciless Spaniards is a grievance not to be borne. Should we tamely submit to such manacles we should be unworthy the name of Americans, and a scandal to the annals of its history. It is very surprising to every rational person that the legislature of the United States, which has been so applauded for their assertion and defence of their rights and privileges, should so soon endeavour to subjugate the greatest part of their dominion even to worse slavery than even Great Britain presumed to subjugate any part of hers. Ireland is a free country to what this will be when its navigation is entirely shut; we may as well be sold for bondsmen as to have the Spaniards share all the benefits of our toils. They will receive all

the fruits, produce of this large, rich and fertile country at their own prices, (which you may be assured will be very low) and therefore will be able to supply their own markets and all the markets of Europe on much lower terms than what the Americans possibly can. What then are the advantages that the inhabitants of the Atlantick shores are to receive? This is summed up in a very few words: their trade and navigation ruined, and their brethren labouring to enrich a luxurious, merciless and arbitrary nation. Too much of our property have they already seized, condemned and confiscated, testimonies of which I send you accompanying this. Our situation cannot possibly be worse, therefore every exertion to retrieve our circumstances must be manly, eligible and just. The minds of the people here are very much exasperated against both the Spaniards and Congress. But they are happy to hear that the state of Georgia have protested against such vile proceedings; therefore they have some hopes, looking up to that state, craving to be protected in our just rights and privileges. Matters here seem to wear a threatening aspect. The troops stationed at post St. Vincent by orders of general George R. Clarke have seized upon what Spanish property there was at that place, also at the Illinois, in retaliation for their many offences. General Clarke, who has fought so gloriously for his country, and whose name strikes all the western savages with terrour, together with many other gentlemen of merit, engages to raise troops sufficient, and go with me to the Natchez to take possession, and settle the lands agreeable to the lines of that state, at their own risk and expense;

provided you in your infinite goodness will countenance them, and give us the lands to settle it agreeable to the laws of your state. Hundreds are now waiting to join us with their families, seeking asylum for liberty and religion. Not hearing that the lines are settled between you and the Spaniards, we therefore wish for your directions concerning them, and the advice of your superiour wisdom. At the same time assuring you that we have contracted for a very large quantity of goods, we hope sufficient to supply all the Indians living within the limits of Georgia. Trusting that we shall be able to make them independent of the Spaniards, wean their affections and procure their esteem for us and the United States, as we expect to take the goods down with us. We earnestly pray that you would give us full liberty to trade with all those tribes, and also to give your agents for Indian affairs all the necessary instructions for the prosperity of our scheme. The season for the Indian trade will be so far advanced that I wait with very great impatience.

General Clarke, together with a number of other gentlemen, will be ready to proceed down the river with me on the shortest notice, therefore hope and earnestly pray that you will despatch the express back with all possible speed with your answer, and all the encouragement due to so great an undertaking. As to the farther particulars, I refer you to the bearer Mr. William Wells, a gentlemen of merit who will be able to inform you more minutely than I possibly can of the sentiments of the people of this western country.

Sir, I have the honour to be your honours, &c.

THOMAS GREEN.

P. S. Honourable sirs, As my family together with others are now at Natchez, I earnestly pray that if you have given up your claim of that country to the Spaniards, that you would enable us to withdraw them together with our effects from under that despotick government. T. G.

P. S. Honourable sirs, The amazing bad travelling at this season of the year, from the streams being high and the roads bad, and the danger of the savages so great, that I could not prevail with a trusty person to undertake the journey under sixty pounds, which you will please to pay to the bearer, Mr. Wells, whom I have prevailed upon through his zeal for the cause.

THOMAS GREEN.

To the Hon. the Governour, the Council and Legislature of the State of Georgia.

Louisville, December 4, 1786.

Jefferson County, ss.

Whereas William Wells is now employed by colonel Thomas Green and others to go to Augusta, in the state of Georgia, on publick business, and it being uncertain whether he will be paid for his journey out of the publick treasury: should he not be, on his return, we the subscribers do jointly and severally, for value received, promise to pay him on demand the several

sums that are affixed to our names, as witness our hands.

Thomas Green,	£10	
John Williams,	1	
George R. Clarke,	10	
Lawrence Muse,	3	
Richard Brashears,	5	
James Patton,	3	
James Huling,	1	
David Morgan,	1	
John Montgomery,	1	
Ebenezer S. Platt,	1	10
Robert Elliott,		10
Thomas Stribbling,	1	10
	£38	10

Danville, December 22, 1786.

We do certify the foregoing papers to be true copies of the papers shown to us by William Wells, the person referred to by Thomas Green in the said letter.

Harry Innes,
J. Brown,
Chris. Greenup.

A copy. Test.

(Signed) Samuel Coleman, A. C. C.

No. 8.

Washington, February 16, 1787.

SIR,

A paper was handed to me a few days ago, by a gentleman who had lately been in the country below

us, called Frankland. From what I learned from him, great pains was taking to circulate copies, giving them an air of secrecy.

The object seemed to be aimed at, and the consequences that may ensue, direct me to judge it to be my duty to forward to your excellency the enclosed copy.

I have the honour to be, &c.

ARTHUR CAMPBELL.

His Excellency Edmund Randolph,
Governour of Virginia.

A copy. Test.

(Signed) SAMUEL COLEMAN, A. C. C.

[Enclosed in the preceding.]

A copy of a letter from a gentleman at the falls of Ohio, to his friend in New England, dated December 4, 1786.

Dear sir, Politicks, which a few months ago were scarcely thought of, are now sounded aloud in this part of the world, and discussed by almost every person. The late commercial treaty with Spain, in shutting up, as it is said, the navigation of the Mississippi, for the term of twenty-five years, has given this western country a universal shock, and struck its inhabitants with an amazement. Our foundation is affected; it is therefore necessary that every individual exert himself to apply a remedy. To sell us, and make us vassals to the merciless Spaniards, is a grievance not to be borne. The parliamentary acts which occasioned our revolt from Great Britain were not so barefaced and intolerable. To give us the liberty of transporting our effects down the river to New Orleans, and then be

subject to the Spanish laws and impositions, is an insult upon our understanding. We know by woful experience that it is in their power, when once there, to take our produce at any price they please. Large quantities of flour, tobacco, meal, &c. have been taken there the last summer, and mostly confiscated. Those who had permits from their governour, were obliged to sell at a price he was pleased to state, or subject themselves to lose the whole. Men of large property are already ruined by their policy. What benefit can you on the Atlantick shores receive from this act? The Spaniards from the amazing resources of this river can supply all their own markets at a much lower price than you possibly can. Though this country has been settling but about six years, and that in the midst of an inveterate enemy, and most of the first adventurers fallen a prey to the savages, and although the emigration to this country is so very rapid that the internal market is very great, yet the quantities of produce they now have on hand are immense. Flour and pork are now selling here at twelve shillings the hundred; beef in proportion; any quantities of Indian corn can be had at nine pence per bushel. Three times the quantity of tobacco and corn can be raised on an acre here that can be within the settlement on the east side of the mountains, and with less cultivation. It is therefore rational to suppose that in a very few years the vast bodies of waters in those rivers will labour under immense weight of the produce of this rich and fertile country, and the Spanish ships be unable to convey it to market.

Do you think to prevent the emigration from a barren country loaded with taxes and impoverished with debts, to the most luxurious and fertile soil in the world? Vain is the thought, and presumptuous the supposition. You may as well endeavour to prevent the fishes from gathering on a bank in the sea which affords them plenty of nourishment. Shall the best and largest part of the United States be uncultivated, a nest for savages and beasts of prey? Certainly not. Providence has designed it for some nobler purposes. This is convincing to every one who beholds the many advantages and pleasing prospects of this country. Here is a soil, richer to appearance than can possibly be made by art. Large plains and meadows without the labour of hands, sufficient to support millions of cattle summer and winter; cane, which is also a fine nourishment for them, without bounds. The spontaneous production of this country surpasses your imagination. Consequently, I see nothing to prevent our herds being as numerous here in time as they are in the kingdom of Mexico. Our lands to the northward of the Ohio for the produce of wheat, &c. will, I think, vie with the island of Sicily. Shall all this country now be cultivated entirely for the use of the Spaniards? Shall we be their bondmen as the children of Israel were to the Egyptians? Shall one part of the United States be slaves, while the other is free? Human nature shudders at the thought, and freemen will despise those who could be so mean as to even contemplate on so vile a subject.

Our situation is as bad as it possibly can be, therefore every exertion to retrieve our circumstances must be manly, eligible and just.

We can raise twenty thousand troops this side the Alleghany and Apalachian mountains; and the annual increase of them by emigration, from other parts, is from two to four thousand.

We have taken all the goods belonging to the Spanish merchants of post Vincennes and the Illinois, and are determined they shall not trade up the river, provided they will not let us trade down it. Preparations are now making here (if necessary) to drive the Spaniards from their settlements, at the mouth of the Mississippi. In case we are not countenanced and succoured by the United States (if we need it) our allegiance will be thrown off, and some other power applied to. Great Britain stands ready with open arms to receive and support us. They have already offered to open their resources for our supplies. When once re-united to them, "farewell, a long farewell to all your boasted greatness." The province of Canada and the inhabitants of these waters, of themselves, in time, will be able to conquer you. You are as ignorant of this country as Great Britain was of America. These hints if rightly improved, may be of some service; if not, blame yourselves for the neglect.

A copy. Test.

SAMUEL COLEMAN, A. C. C.

[North Carolina.]

The undersigned delegates, in obedience to the commands of the state of North Carolina, have the honour to lay before Congress the papers herein after

mentioned ; to the end that the United States in Congress assembled may take such order thereon as the information may justify.

No. 1. A letter of the 15th November, 1786, from Thomas Amis to the governour of North Carolina, with papers enclosed, respecting the seizure and confiscation of sundry articles of merchandise, his property, for the use of the crown of Spain at fort Natchez, on the Mississippi, obviously within the dominion of the United States.

2. The deposition of Thomas Amis.

3. A certificate of the merchandise from the Spanish officer who received the same.

4. A passport from the commandant of fort Natchez, expressive of the gentlemanly behaviour of Mr. Amis, during his stay at the Natchez.

To this information the delegates have thought proper to subjoin the extract of a letter, No. 5, from a representative of Davidson county, in the general assembly of North Carolina, directed to the honourable William Blount and Benjamin Hawkins.

(Signed) WM. BLOUNT.
BENJAMIN HAWKINS.
JOHN B. ASHE.

Congress Chamber, the 29th March, 1787.

No. 1.

Powel's Valley, November 15, 1786.

DEAR AND WORTHY SIR,

I am on my way home from Mississippi, which I have found a very tedious and precarious journey by

land, contrary to my inclination and interest, as you will find by the enclosed deposition. As to particulars, I refer you to my friend, colonel Bledsoe, with whom I have travelled from Kentucky. I send the enclosed, in order that your excellency should communicate the same to Congress, or take such other necessary steps as you in your wisdom think meet for publick good, as I never expect to be benefitted any thing by that small venture, nor any other trade down the Mississippi, under the present government there. I hope you will excuse my short and incorrect writing, as colonel Bledsoe is much hurried to the assembly, and will not be prevailed on to call on me to stay one hour.

I am with sincere regard your most obedient, &c.

(Signed) THOMAS AMIS.

His Excellency Richard Caswell, Esq.

No. 2.

This day, Thomas Amis personally appeared before me, a justice of the peace for Davidson county, and made oath on the holy evangelist of Almighty God, That on the sixth day of June last past, he arrived at fort Natchez, on the Mississippi, with sundry articles of merchandise, as per receipt from the Spanish commissary hereto annexed; which goods the said deponent saith he proposed to the Spanish commandant to carry out of the mouth of the river, but was refused the benefit of the navigation of the Mississippi; and the said goods were seized and confiscated for the

use of the crown of Spain. And this deponent further saith that he received no satisfaction for said goods.

THOMAS AMIS.

Sworn to this 15th November, 1786, before me,

DANIEL SMITH.

No. 3.

Account of castings deposited in publick store at Natchez.

142 Dutch ovens, 11.
53 Pots and kettles,
34 Skillets, 2.
33 Cast boxes,
3 Pair dog irons,
1 Pair flat irons,
1 Spice mortar, 1.
1 Plough mould, 1.
50 Barrels flour.

No. 4.

TRANSLATION.

Don Carlos de Grandpri, lieutentant colonel of his majesty's armies, captain of the first company of grenadiers of the Louisiana regiment of infantry, commandant civil and military of fort Natchez and its district, &c.

Permit Mr. Thomas Amis, his son John Amis, and two negroes belonging to them, and the named William Fletcher, to pass into North Carolina to their families. I desire and charge they may be permitted to pass un-

molested, as the said Mr. Amis has, while his stay here, behaved himself as a gentleman and man of the strictest honour.

Given under my hand this 29th of August, 1786.

(Signed) CHARLES DE GRAND PRI.

Translated by
STEPHEN MINOR.

No. 5.

An Extract.

Fayetteville, December 29, 1786.

You told us, and particularly colonel Hawkins while he was negotiating with the southern Indians, that every thing would go well within the present year, as the Spanish minister was now with Congress to settle any differences that might subsist between us. Our people relying on your predictions and advice are still patient. But how long they may continue so you will probably be able to judge when you shall have received some propositions which will be made to you. Mr. Amis whom you know, has been on a losing voyage down the Mississippi; the governour has his papers, and will lay them before you and Congress. When he returned from the Natchez and told his misfortunes to the people of Davidson, they at first determined to retaliate, be the consequence ever so hazardous; but the wise ones persuaded them not to imitate their friends of Kentucky, and to wait patiently until some advice could be received from Congress, or until we could see or hear from you. The legislature will rise within ten days, and we will write more fully to you

then. Colonel Robertson, colonel Polk and myself will return immediately to Nashville. Robertson will write to colonel Blount respecting his lands; and we count on seeing him at Nashville in the summer. I was requested and have sent an extract of the letter to colonel Hawkins to the printers at Richmond; if it should appear in print you can account for it. Pray write to us by every opportunity by the way of fort Pitt and the Falls to the care of general Wilkinson.

With a sincere desire for your welfare and happiness, I have the honour to be, in behalf of all representatives, gentlemen, your most obedient.

P. S. We have received colonel H's letter of the 27th, from Warren. His opinion on the report respecting the giving the navigation of the Mississippi to Spain is very pleasing to us, and will be so to our constituents. You may depend on our exertions to keep all things quiet; and we agree entirely with you, that if our people are once let loose, there will be no stopping them, and that acts of retaliation poison the mind, and give a licentiousness to manners, that can with great difficulty be restrained.

The foregoing reports being read,

A motion was made by Mr. Madison, seconded by Mr. Hawkins, that the same be referred to a committee; and on the question for commitment, the yeas and nays being required by Mr. King—

Massachusetts,	Mr. King,	No.	No.
	Mr. Dane,	No.	

Rhode Island,	Mr. Varnum,	Ay.	Ay.
	Mr. Arnold,	Ay.	
Connecticut,	Mr. Johnson,	No.	No.
	Mr. S. M. Mitchell,	No.	
New York,	Mr. Smith,	No.	No.
	Mr. Benson,	No.	
Pennsylvania,	Mr. St. Clair,	No.	Ay.
	Mr. Pettit,	Ay.	
	Mr. Irvine,	Ay.	
Delaware,	Mr. Kearny,	Ay.×	
Virginia,	Mr. Grayson,	Ay.	Ay.
	Mr. Carrington,	Ay.	
	Mr. Madison,	Ay.	
North Carolina,	Mr. Hawkins,	Ay.	Ay.
	Mr. Ashe,	Ay.	
South Carolina,	Mr. Huger,	Ay.×	
Georgia,	Mr. Few,	Ay.	Ay.
	Mr. Pierce,	Ay.	

So the question was lost.

The secretary for foreign affairs having, in pursuance of an order of Congress, reported the draft of a letter to the states, to accompany the resolutions passed the 21st day of March, 1787, the same was taken into consideration, and unanimously agreed to as follows:

SIR,

Our secretary for foreign affairs has transmitted to you copies of a letter to him from our minister at the

court of London, of the 4th day of March, 1786, and of the papers mentioned to have been enclosed with it.

We have deliberately and dispassionately examined and considered the several facts and matters urged by Britain as infractions of the treaty of peace, on the part of America ; and we regret that, in some of the states, too little attention appears to have been paid to the publick faith pledged by that treaty. Not only the obvious dictates of religion, morality and national honour, but also the first principles of good policy, demand a candid and punctual compliance with engagements constitutionally and fairly made. Our national constitution having committed to us the management of the national concerns with foreign states and powers, it is our duty to take care that all the rights which they ought to enjoy within our jurisdiction, by the laws of nations and the faith of treaties, remain inviolate. And it is also our duty to provide, that the essential interests and peace of the whole confederacy be not impaired, or endangered, by deviations from the line of publick faith, into which any of its members may from whatever cause be unadvisedly drawn.

Let it be remembered, that the thirteen independent sovereign states have, by express delegation of power, formed and vested in us a general though limited sovereignty for the general and national purposes specified in the confederation. In this sovereignty they cannot severally participate, except by their delegates, nor with it have concurrent jurisdiction ; for the ninth article of the confederation most expressly conveys to us the sole and *exclusive* right and power of determin-

ing on war and *peace*, and of entering into *treaties* and alliances, &c.

When therefore a treaty is constitutionally made, ratified and published by us, it immediately becomes binding on the whole nation, and superadded to the laws of the land, without the intervention of state legislatures. Treaties derive their obligation from being compacts between the sovereign of this and the sovereign of another nation; whereas laws or statutes derive their force from being acts of a legislature competent to the passing of them. Hence it is clear, that treaties must be implicitly received and observed by every member of the nation; for as state legislatures are not competent to the making of such compacts or treaties, so neither are they competent, in that capacity, authoritatively to decide on or ascertain the construction and sense of them. When doubts arise respecting the construction of state laws, it is not unusual nor improper for the state legislatures by explanatory or declaratory acts to remove those doubts. But the case between laws and compacts or treaties is in this widely different; for when doubts arise respecting the sense and meaning of a treaty, they are so far from being cognizable by a state legislature, that the United States in Congress assembled have no authority to settle and determine them. For as the legislature only which constitutionally passes a law has power to revise and amend it, so the sovereigns only who are parties to the treaty have power, by mutual consent and posterior articles, to correct or explain it.

In cases between individuals all doubts respecting the meaning of a treaty, like all doubts respecting the

meaning of a law, are in the first instance mere judicial questions; and are to be heard and decided in the courts of justice having cognizance of the causes in which they arise, and whose duty it is to determine them according to the rules and maxims established by the laws of nations for the interpretation of treaties. From these principles it follows of necessary consequence, that no individual state has a right, by legislative acts, to decide and point out the sense in which their particular citizens and courts shall understand this or that article of a treaty. It is evident that a contrary doctrine would not only militate against the common and established maxims and ideas relative to this subject, but would prove no less inconvenient in practice than it is irrational in theory; for in that case, the same article of the same treaty might by law be made to mean one thing in New Hampshire, another thing in New York, and neither the one nor the other of them in Georgia.

How far such legislative acts would be valid and obligatory, even within the limits of the state passing them, is a question which we hope never to have occasion to discuss. Certain however it is, that such acts cannot bind either of the contracting sovereigns, and consequently cannot be obligatory on their respective nations.

But if treaties and every article in them be (as they are and ought to be) binding on the whole nation; if individual states have no right to accept some articles and reject others; and if the impropriety of state acts to interpret and decide the sense and construction of them be apparent; still more manifest must be the im-

propriety of state acts to control, delay or modify the operation and execution of these national compacts.

When it is considered that the several states assembled by their delegates in Congress have express power to form treaties, surely the treaties so formed are not afterwards to be subject to such alterations as this or that state legislature may think expedient to make, and that too without the consent of either of the parties to it; that is, in the present case, without the consent of all the United States, who collectively are parties to this treaty on the one side, and his Britannick majesty on the other. Were the legislatures to possess and to exercise such power, we should soon be involved as a nation in anarchy and confusion at home, and in disputes which would probably terminate in hostilities and war with the nations with whom we may have formed treaties. Instances would then be frequent, of treaties fully executed in one state, and only partly executed in another, and of the same article being executed in one manner in one state, and in a different manner, or not at all, in another state. History furnishes no precedent of such liberties taken with treaties under form of law in any nation.

Contracts between nations, like contracts between individuals, should be faithfully executed, even though the sword in the one case, and the law in the other, did not compel it. Honest nations like honest men require no constraint to do justice; and though impunity and the necessity of affairs may sometimes afford temptations to pare down contracts to the measure of convenience, yet it is never done but at the expense of that esteem, and confidence, and credit which are of

infinitely more worth than all the momentary advantages which such expedients can extort.

But although contracting nations cannot like individuals avail themselves of courts of justice to compel performance of contracts, yet an appeal to Heaven and to arms is always in their power, and often in their inclination.

But it is their duty to take care that they never lead their people to make and support such appeals, unless the sincerity and propriety of their conduct affords them good reason to rely with confidence on the justice and protection of Heaven.

Thus much we think it useful to observe in order to explain the principles on which we have unanimously come to the following resolution, viz.

"Resolved, That the legislatures of the several "states cannot of right pass any act or acts for inter- "preting, explaining or construing a national treaty, "or any part or clause of it, nor for restraining, limit- "ing or in any manner impeding, retarding or counte- "racting the operation and execution of the same; "for that on being constitutionally made, ratified and "published, they become, in virtue of the confedera- "tion, part of the law of the land, and are not only in- "dependent of the will and power of such legislatures, "but also binding and obligatory on them."

As the treaty of peace, so far as it respects the matters and things provided for in it, is a law to the United States, which cannot by all or any of them be altered or changed, all state acts establishing provisions relative to the same objects which are incompatible with it, must in every point of view be improper.

Such acts do nevertheless exist, but we do not think it necessary either to enumerate them particularly, or to make them severally the subjects of discussion. It appears to us sufficient to observe and insist, that the treaty ought to have free course in its operation and execution, and that all obstacles interposed by state acts be removed. We mean to act with the most scrupulous regard to justice and candour towards Great Britain, and with an equal degree of delicacy, moderation and decision towards the states who have given occasion to these discussions.

For these reasons we have in general terms "resolved, that all such acts or parts of acts, as may be "now existing in any of the states repugnant to the "treaty of peace, ought to be forthwith repealed, as "well to prevent their continuing to be regarded as "violations of that treaty, as to avoid the disagreeable "necessity there might otherwise be of raising and "discussing questions touching their validity and obli-"gation."

Although this resolution applies strictly only to such of the states as have passed the exceptionable acts alluded to, yet to obviate all future disputes and questions, as well as to remove those which now exist, we think it best that every state without exception should pass a law on the subject. We have therefore "resolved, that it be recommended to the several states "to make such repeal rather by describing than reciting the said acts, and for that purpose to pass an act "declaring in general terms, that all such acts and "parts of acts repugnant to the treaty of peace between the United States and his Britannick majesty,

" or any article thereof, shall be and thereby are re-
" pealed; and that the courts of law and equity in all
" cases and questions cognizable by them respective-
" ly, and arising from or touching the said treaty, shall
" decide and adjudge according to the true intent and
" meaning of the same, any thing in the said acts or
" parts of acts to the contrary thereof in any wise
" notwithstanding."

Such laws would answer every purpose and be easily formed; the more they were of the like tenor throughout the states the better. They might each recite that,

Whereas certain laws or statutes made and passed in some of the United States, are regarded and complained of as repugnant to the treaty of peace with Great Britain, by reason whereof not only the good faith of the United States pledged by that treaty has been drawn into question, but their essential interests under that treaty greatly affected: and whereas justice to Great Britain as well as regard to the honour and interests of the United States require, that the said treaty be faithfully executed, and that all obstacles thereto, and particularly such as do or may be construed to proceed from the laws of this state, be effectually removed: Therefore,

Be it enacted by and it is hereby enacted by the authority of the same, that such of the acts or parts of acts of the legislature of this state as are repugnant to the treaty of peace between the United States and his Britannick majesty, or any article thereof, shall be and hereby are repealed; and further that the courts of law and equity within this

state be and they hereby are directed and required, in all causes and questions cognizable by them respectively, and arising from or touching the said treaty, to decide and adjudge according to the tenor, true intent and meaning of the same, any thing in the said acts or parts of acts to the contrary thereof in any wise notwithstanding.

Such a general law would we think be preferable to one that should minutely enumerate the acts and clauses intended to be repealed; because omissions might accidentally be made in the enumeration, or questions might arise and perhaps not be satisfactorily determined respecting particular acts or clauses, about which contrary opinions may be entertained. By repealing in general terms all acts and clauses repugnant to the treaty, the business will be turned over to its proper department, viz. the judicial; and the courts of law will find no difficulty in deciding whether any particular act or clause is or is not contrary to the treaty. Besides, when it is considered that the judges in general are men of character and learning, and feel as well as know the obligations of office and the value of reputation, there is no reason to doubt that their conduct and judgments relative to these as well as other judicial matters will be wise and upright.

Be pleased, sir, to lay this letter before the legislature of your state without delay. We flatter ourselves they will concur with us in opinion, that candour and justice are as necessary to true policy as they are to sound morality, and that the most honourable way of delivering ourselves from the embarrassment of mistakes, is fairly to correct them. It certainly is time

that all doubts respecting the publick faith be removed, and that all questions and differences between us and Great Britain be amicably and finally settled. The states are informed of the reasons why his Britannick majesty still continues to occupy the frontier posts which by the treaty he agreed to evacuate: and we have the strongest assurances that an exact compliance with the treaty on our part, shall be followed by a punctual performance of it on the part of Great Britain.

It is important that the several legislatures should, as soon as possible, take these matters into consideration; and we request the favour of you to transmit to us an authenticated copy of such acts and proceedings of the legislature of your state as may take place on the subject and in pursuance of this letter.

By order of Congress.

President.

APRIL 20, 1787.

A motion having been made by Mr. Madison for sending the minister plenipotentiary at the court of France, under a special commission to the court of Madrid, for purposes therein expressed, the same was referred to the secretary for foreign affairs, who reported thereon as follows:

Office for Foreign Affairs, April 20, 1787.

The secretary of the United States for the department of foreign affairs, to whom was referred a motion made the 13th April, instant, by the honourable Mr.

Madison, in these words, viz. "Resolved, That the pre-
"sent state of the negotiations with Spain and of the af-
"fairs of the United States, renders it expedient that
"the minister plenipotentiary at the court of France
"should proceed under a special commission to the
"court of Madrid, there to make such representations,
"and to urge such negotiations, as will be most likely
"to impress on the said court the friendly disposition
"of the United States, and to induce it to make such
"concessions and arrangements touching the southern
"limit of the United States, and their right to navi-
"gate the Mississippi below the same, and to enter
"into such commercial stipulations with the United
"States, as may most effectually guard against a rup-
"ture of the subsisting harmony, and promote the
"mutual interests of the two nations.

"Resolved, That the secretary for foreign affairs
"prepare and report the instructions proper to be given
"to the said minister plenipotentiary, with a proper
"commission and letter of credence; and that he also
"report the communications and explanations which
"it may be advisable to make to Mr. Gardoqui, rela-
"tive to this change in the mode of conducting the
"negotiations with his court:" reports,

The first question that this motion presents, is, Whether it will be expedient to endeavour to carry the Spanish negotiation from New York to Madrid.

It is generally, and with reason, held to be more honourable to a nation that foreign powers should send ambassadors to treat with their sovereign at his own house, than that they should send ambassadors to treat with a foreign sovereign at his court.

It is also, and with equal reason, generally deemed more advantageous to negotiate at home than in a distant country; because in the *latter* case, much must be confided to the discretion of the negotiator; and because the distance prevents his consulting and being directed by his sovereign on unexpected occasions and events as they rise, and which sometimes require immediate decision.

As these considerations afford strong and weighty reasons for continuing the present negotiation at the seat of Congress, those for carrying it to Madrid should clearly preponderate before they are permitted to operate that change.

Two reasons are assigned for the proposed change. One of them is exceedingly indefinite, viz. the *present state of our affairs*. What particular facts and circumstances in the present state of our affairs are alluded to, your secretary is at a loss to discern; for he does not know of any that would in his opinion be meliorated by the change.

The other reason is, the *present state of the negotiation*. With that he is perfectly well acquainted; but if the negotiation goes to Madrid, he does not conceive that it will leave behind it any of the difficulties, questions, or embarrassments which perplex and retard it at New York.

The reasons therefore assigned in the motion for the measure in question, do not appear to him adequate to the consequences drawn from them.

Should such a measure be adopted, the court of Spain will doubtless view it as very singular; and from that circumstance be disposed to suspect that it ori-

ginated in other than the avowed inducements. Why should Congress forego the honour and convenience of treating with us at home? If discontented with their own negotiator, why this circuitous way of changing him? If with ours, how has it happened that no symptoms of it have appeared? On the contrary, we are well informed that he is esteemed and respected in America. As to the differences between us, how are they diminished by this measure? These and a variety of other questions will more readily occur to the Spanish court, than satisfactory answers to them; and your secretary apprehends, that all these investigations will terminate in a firm belief, that a design to gain time, and to amuse, was the true reason. Whether such a suspicion would be well or ill founded, would be unimportant; for its operation would be exactly the same in the one case as in the other. The only question is, Whether it is not highly probable, nay, almost certain, that they would impute it to that cause?

Your secretary has reason to believe, that Mr. Gardoqui, as well as some others, are not ill informed of interesting debates in Congress; and that the conversation of members out of doors does not always remain sub rosa. How or in what point of light the design of such a measure would strike him, your secretary can only conjecture. It is, however, natural to suppose, that he would take no pains to prevent its proving abortive; and that his representations of it to his court would not be calculated to give it a welcome reception there, nor to impress them with a favourable opinion of the purposes intended by it.

When too the court of Spain finds that Mr. Jefferson is only empowered to confer about the Mississippi and the boundaries, but not to *conclude*, their suspicions of a design to delay and amuse would be confirmed; for it is observable that the motion proposes only to authorize him *to enter into commercial stipulations*. On the other topicks he is to *make representations*, to urge such negotiations as will be most likely to *impress* on the court the friendly disposition of the United States, and to *induce* it to make concessions, &c.; but not a word that gives him power to *conclude* a treaty on those points. Perhaps this may only be an inadvertent inaccuracy in the motion; if not, it gives much colour to the inferences above suggested.

All these considerations and circumstances combined, induce your secretary to think it highly probable that his catholick majesty will not consent to treat at Madrid; that his opinion of the candour of the United States will be diminished by the measure in question; and that he will direct his minister here to state his ultimate propositions explicitly to Congress, and to insist on a speedy and categorical answer.

If such would be the *probable* consequence of the measure proposed, your secretary thinks it would be hazarding too much to adopt it.

If Congress should, notwithstanding, think it expedient to transfer the negotiation to Madrid, your secretary is convinced that it cannot be confided to a person better qualified to manage it than to Mr. Jefferson; and in that case your secretary will with alacrity and zeal do whatever may depend upon him to promote the success of it.

MAY 3, 1787.

Congress proceeded to the consideration of the report of the secretary of the United States for the department of foreign affairs, to whom was referred his letter of 8th December last, to his excellency the President, with two commissions from his Britannick majesty, dated the 5th day of April, 1786, the one constituting Phineas Bond, esquire, his consul for New York, New Jersey, Pennsylvania, Delaware and Maryland, the other constituting him his majesty's commissary for commercial affairs throughout the United States; and Congress approved of the said report, and agreed to the following resolutions, to wit:

Whereas Phineas Bond, esquire, has presented to the United States in Congress assembled, a commission in due form, bearing date the 5th April, 1786, from his Britannick majesty, constituting and appointing him the consul of his said majesty in the states of New York, New Jersey, Pennsylvania, Delaware and Maryland; and although no commercial treaty or convention subsists between his majesty and the United States, whereby either have a perfect right to establish consuls or commissaries in the dominions of the other; yet as the United States are disposed by every proper mark of liberality and attention to promote a good correspondence between the two countries; and particularly as amicable negotiations are now pending between them:

Resolved, That the said Phineas Bond, esquire, be and he hereby is received and recognised as the consul of his Britannick majesty, throughout the states of

New York, New Jersey, Pennsylvania, Delaware and Maryland, and that his commission be registered in the secretary's office.

Resolved, That all the privileges, pre-eminences and authority which the laws of nations and of the land give to a consul received by the United States from any nation with whom they have no commercial treaty or convention, are due to and shall be enjoyed by the said Phineas Bond, as consul for the five states abovementioned, and that certified copies of these resolutions be transmitted to the executives of the said five states for their information.

The secretary for foreign affairs reported the following draft of a letter to Mr. Adams:

SIR,

In obedience to the orders of Congress, I have the honour of informing you that Phineas Bond, esquire, has presented to Congress a commission from his Britannick majesty constituting him commissary for all commercial affairs within the United States, and another commission constituting him consul for the states of New York, New Jersey, Pennsylvania, Delaware and Maryland.

Congress being desirous on this and every other occasion to manifest their disposition to cultivate a friendly correspondence with Great Britain, have received Mr. Bond in his latter capacity, although no treaty or convention subsists between the two countries whereby either have a right to establish consuls in the dominions of the other.

As yet Congress have not received any commissaries for commercial affairs; and they think it most prudent not to receive them from any nation until their powers shall have been previously ascertained by agreement, lest, as those appointments are seldom made, and both parties may not have precisely the same ideas of the extent of the powers and privileges annexed to them, disagreeable questions and discussions might and probably would otherwise take place on those delicate subjects.

You will be pleased to submit these reasons to his majesty, and to assure him that Congress regret the objections which oppose their complying with his wishes in this instance; but that they are ready to join with his majesty in such agreements or conventions as may be necessary to remove them, and which may also tend to promote and establish a friendly and satisfactory commercial intercourse between the two countries.

Ordered, That the above letter be referred to the secretary for foreign affairs to take order.

MAY 11, 1787.

A motion being made by Mr. Few, seconded by Mr. Pierce, in the following words, viz.

That the proceedings of Congress of the 29th day of August last do not authorize the secretary of the United States for the department of foreign affairs to enter into any stipulation with the minister of his catholick majesty, whereby the right of the United States to

the free navigation of the Mississippi should be relinquished or impaired, nor to give up any right of territory comprehended in the treaty of peace with Great Britain—

A motion was made by Mr. King, seconded by Mr. Gorham, to amend the motion by striking out "of the "29th day of August last," and from "whereby" to the end, so as to read as follows:

That the proceedings of Congress do not authorize the secretary of the United States for the department of foreign affairs to enter into any stipulation with the minister of his catholick majesty.

And on the question, Shall these words stand, the yeas and nays being required by Mr. King—

Massachusetts,	Mr. Gorham,	No.	No.
	Mr. King,	No.	
	Mr. Dane,	No.	
New York,	Mr. Smith,	No.	No.
	Mr. Benson,	No.	
New Jersey,	Mr. Clarke,	Ay.	Ay.
	Mr. Scheurman,	Ay.	
Pennsylvania,	Mr. St. Clair,	No.	Ay.
	Mr. Pettit,	Ay.	
	Mr. Armstrong,	Ay.	
Delaware,	Mr. Mitchell,	Ay.	Ay.
	Mr. Kearny,	Ay.	
Maryland,	Mr. Ross,	No.	No.
	Mr. Ramsay,	No.	
Virginia,	Mr. Grayson,	Ay.	Ay.
	Mr. Carrington,	Ay.	
	Mr. Lee,	No.	

North Carolina,	Mr. Blount,	Ay.	Ay.
	Mr. Ashe,	Ay.	
South Carolina,	Mr. Huger,	Ay.	×
Georgia,	Mr. Few,	Ay.	Ay.
	Mr. Pierce,	Ay.	

So the question was lost, and the words were struck out.

A motion was then made by Mr. Grayson, seconded by Mr. Few, to amend the motion before the house by adding " on terms different from those contained in the resolutions of the 25th August, 1785."

On the question for amendment, the yeas and nays being required by Mr. Grayson—

Massachusetts,	Mr. Gorham,	No.	No.
	Mr. King,	No.	
	Mr. Dane,	No.	
Rhode Island,	Mr. Arnold,	Ay.	×
New York,	Mr. Smith,	No.	No.
	Mr. Benson,	No.	
New Jersey,	Mr. Clarke,	Ay.	Ay.
	Mr. Scheurman,	Ay.	
Pennsylvania,	Mr. St. Clair,	No.	Ay.
	Mr. Pettit,	Ay.	
	Mr. Armstrong,	Ay.	
Delaware,	Mr. Mitchell,	Ay.	Ay.
	Mr. Kearny,	Ay.	
Maryland,	Mr. Ross,	No.	No.
	Mr. Ramsay,	No.	

Virginia,	Mr. Grayson,	Ay.	Ay.
	Mr. Carrington,	Ay.	
	Mr. Lee,	No.	
North Carolina,	Mr. Blount,	Ay.	Ay.
	Mr. Ashe,	Ay.	
South Carolina,	Mr. Huger,	No.	×
Georgia,	Mr. Few,	Ay.	Ay.
	Mr. Pierce,	Ay.	

So the question was lost.

JULY 18, 1787.

On a report of the secretary of the United States for the department of foreign affairs, to whom was referred a petition from Hannah Stephens, praying that her husband be redeemed from captivity at Algiers; and also a letter from the honourable T. Jefferson, proposing that a certain order of priests be employed for such purposes:

Resolved, That the honourable T. Jefferson, esquire, the minister of the United States at the court of Versailles, be and he hereby is authorized, to take such measures as he may deem most advisable for redeeming the American captives at Algiers, and at any expense not exceeding that which European nations usually pay in like cases.

Resolved, That the board of treasury be and they hereby are directed, to provide ways and means for enabling Mr. Jefferson to defray the said expenses, either by remitting money from hence or by a credit in Europe.

On the report of the secretary of the United States for the department of foreign affairs, to whom was referred a treaty lately concluded with the emperor of Morocco, Congress ratified the said treaty in the manner and form following:

The United States of America in Congress assembled—To all who shall see these presents, Greeting.

Whereas the United States of America in Congress assembled, by their commission bearing date the twelfth day of May, one thousand seven hundred and eighty-four, thought proper to constitute John Adams, Benjamin Franklin and Thomas Jefferson, their ministers plenipotentiary, giving to them or a majority of them full powers to confer, treat and negotiate with the ambassador, minister or commissioner of his majesty the emperor of Morocco, concerning a treaty of amity and commerce, to make and receive propositions for such treaty, and to conclude and sign the same, transmitting it to the United States in Congress assembled for their final ratification; and by one other commission bearing date the eleventh day of March, one thousand seven hundred and eighty-five, did further empower the said ministers plenipotentiary, or a majority of them, by writing under their hands and seals, to appoint such agent in the said business as they might think proper, with authority under the directions and instructions of the said ministers to commence and prosecute the said negotiations and conferences for the said treaty; provided that the said treaty should be signed by the said

ministers : and whereas the said John Adams and Thomas Jefferson, two of the said ministers plenipotentiary (the said Benjamin Franklin being absent) by writing under the hand and seal of the said John Adams, at London, October the fifth, one thousand seven hundred and eighty-five, and of the said Thomas Jefferson, at Paris, October the eleventh, of the same year, did appoint Thomas Barclay agent in the business aforesaid, giving him the powers therein which by the said second commission they were authorized to give ; and the said Thomas Barclay, in pursuance thereof, hath arranged articles for a treaty of amity and commerce between the United States of America and his majesty the emperor of Morocco ; which articles, written in the Arabic language, confirmed by his said majesty the emperor of Morocco, and sealed with his royal seal, being translated into the language of the said United States of America, together with the attestations thereto annexed, are in the following words, to wit :

IN THE NAME OF ALMIGHTY GOD.

This is a treaty of peace and friendship established between us and the United States of America, which is confirmed, and which we have ordered to be written in this book, and sealed with our royal seal, at our court of Morocco, on the 25th day of the blessed month of Shaban, in the year 1200, trusting in God it will remain permanent.

ARTICLE I.

We declare that both parties have agreed that this treaty, consisting of twenty-five articles, shall be inserted in this book, and delivered to the honourable Thomas Barclay, the agent of the United States now at our court, with whose approbation it has been made, and who is duly authorized, on their part, to treat with us concerning all the matters contained therein.

ARTICLE II.

If either of the parties shall be at war with any nation whatever, the other party shall not take a commission from the enemy, nor fight under their colours.

ARTICLE III.

If either of the parties shall be at war with any nation whatever, and take a prize belonging to that nation, and there shall be found on board subjects or effects belonging to either of the parties, the subjects shall be set at liberty, and the effects returned to the owners. And if any goods belonging to any nation, with whom either of the parties shall be at war, shall be loaded on vessels belonging to the other party, they shall pass free and unmolested, without any attempt being made to take or detain them.

ARTICLE IV.

A signal or pass shall be given to all vessels belonging to both parties, by which they are to be known when they meet at sea; and if the commander of a ship of war of either party shall have other ships under his convoy, the declaration of the commander shall alone be sufficient to exempt any of them from examination.

ARTICLE V.

If either of the parties shall be at war, and shall meet a vessel at sea belonging to the other, it is agreed that if an examination is to be made, it shall be done by sending a boat with two or three men only; and if any gun shall be fired and injury done without reason, the offending party shall make good all damages.

ARTICLE VI.

If any Moor shall bring citizens of the United States, or their effects, to his majesty, the citizens shall immediately be set at liberty, and the effects restored; and in like manner, if any Moor, not a subject of these dominions, shall make prize of any of the citizens of America, or their effects, and bring them into any of the ports of his majesty, they shall be immediately released, as they will then be considered as under his majesty's protection.

ARTICLE VII.

If any vessel of either party shall put into a port of the other, and have occasion for provisions or other supplies, they shall be furnished without any interruption or molestation.

ARTICLE VIII.

If any vessel of the United States shall meet with a disaster at sea, and put into one of our ports to repair, she shall be at liberty to land and reload her cargo, without paying any duty whatever.

ARTICLE IX.

If any vessel of the United States shall be cast on shore on any part of our coasts, she shall remain at the disposition of the owners, and no one shall attempt going near her, without their approbation, as she is then considered particularly under our protection. And if any vessel of the United States shall be forced to put into our ports, by stress of weather, or otherwise, she shall not be compelled to land her cargo, but shall remain in tranquillity, until the commander shall think proper to proceed on his voyage.

ARTICLE X.

If any vessel of either of the parties shall have an engagement with a vessel belonging to any of the

christian powers, within gunshot of the forts of the other, the vessel so engaged shall be defended and protected as much as possible, until she is in safety. And if any American vessel shall be cast on shore on the coast of Wadnoon, or any coast thereabout, the people belonging to her shall be protected and assisted, until, by the help of God, they shall be sent to their country.

ARTICLE XI.

If we shall be at war with any christian power, and any of our vessels sail from the ports of the United States, no vessel belonging to the enemy shall follow until twenty-four hours after the departure of our vessels: and the same regulation shall be observed towards the American vessels sailing from our ports, be their enemies Moors or christians.

ARTICLE XII.

If any ship of war belonging to the United States shall put into any of our ports, she shall not be examined on any pretence whatever, even though she should have fugitive slaves on board; nor shall the governour or commander of the place compel them to be brought on shore on any pretext, nor require any payment for them.

ARTICLE XIII.

If a ship of war of either party shall put into a port of the other, and salute, it shall be returned from the fort with an equal number of guns, not with more or less.

ARTICLE XIV.

The commerce with the United States shall be on the same footing as is the commerce with Spain, or as that with the most favoured nation for the time being; and their citizens shall be respected and esteemed, and have full liberty to pass and repass our country and seaports whenever they please, without interruption.

ARTICLE XV.

Merchants of both countries shall employ only such interpreters, and such other persons to assist them in their business, as they shall think proper. No commander of a vessel shall transport his cargo on board another vessel; he shall not be detained in port longer than he may think proper; and all persons employed in loading or unloading goods, or in any other labour whatever, shall be paid at the customary rates, not more and not less.

ARTICLE XVI.

In case of a war between the parties, the prisoners are not to be made slaves, but to be exchanged one

for another, captain for captain, officer for officer, and one private man for another; and if there shall prove a deficiency on either side, it shall be made up by the payment of one hundred Mexican dollars for each person wanting. And it is agreed that all prisoners shall be exchanged in twelve months from the time of their being taken, and that this exchange may be effected by a merchant, or any other person authorized by either of the parties.

ARTICLE XVII.

Merchants shall not be compelled to buy or sell any kind of goods but such as they shall think proper; and may buy and sell all sorts of merchandise but such as are prohibited to the other christian nations.

ARTICLE XVIII.

All goods shall be weighed and examined before they are sent on board; and to avoid all detention of vessels, no examination shall afterwards be made, unless it shall first be proved that contraband goods have been sent on board, in which case the persons who took the contraband goods on board shall be punished according to the usage and custom of the country, and no other person whatever shall be injured, nor shall the ship or cargo incur any penalty or damage whatever.

ARTICLE XIX.

No vessel shall be detained in port on any pretence whatever, nor be obliged to take on board any article without the consent of the commander, who shall be at full liberty to agree for the freight of any goods he takes on board.

ARTICLE XX.

If any of the citizens of the United States, or any persons under their protection, shall have any disputes with each other, the consul shall decide between the parties; and whenever the consul shall require any aid or assistance from our government, to enforce his decisions, it shall be immediately granted to him.

ARTICLE XXI.

If a citizen of the United States should kill or wound a Moor, or on the contrary, if a Moor shall kill or wound a citizen of the United States, the law of the country shall take place, and equal justice shall be rendered, the consul assisting at the trial; and if any delinquent shall make his escape, the consul shall not be answerable for him in any manner whatever.

ARTICLE XXII.

If an American citizen shall die in our country, and no will shall appear, the consul shall take possession

of his effects; and if there shall be no consul, the effects shall be deposited in the hands of some person worthy of trust, until the party shall appear who has a right to demand them; but if the heir to the person deceased be present, the property shall be delivered to him without interruption; and if a will shall appear, the property shall descend agreeable to that will, as soon as the consul shall declare the validity thereof.

ARTICLE XXIII.

The consuls of the United States of America shall reside in any seaport of our dominions that they shall think proper; and they shall be respected, and enjoy all the privileges which the consuls of any other nation enjoy; and if any of the citizens of the United States shall contract any debts or engagements, the consul shall not be in any manner accountable for them, unless he shall have given a promise in writing for the payment or fulfilling thereof, without which promise in writing no application to him for any redress shall be made.

ARTICLE XXIV.

If any differences shall arise by either party infringing on any of the articles of this treaty, peace and harmony shall remain notwithstanding in the fullest force, until a friendly application shall be made for an arrangement; and until that application shall be rejected, no appeal shall be made to arms. And if a war shall break out between the parties, nine months shall

be granted to all the subjects of both parties to dispose of their effects and retire with their property. And it is further declared, that whatever indulgence in trade or otherwise, shall be granted to any of the christian powers, the citizens of the United States shall be equally entitled to them.

ARTICLE XXV.

This treaty shall continue in full force, with the help of God, for fifty years.

We have delivered this book into the hands of the beforementioned Thomas Barclay, on the first day of the blessed month of Ramadan, in the year one thousand two hundred.

I certify that the annexed is a true copy of the translation made by Isaac Cordoza Nunnez, interpreter at Morocco, of the treaty between the emperor of Morocco and the United States of America.

(Signed) THOMAS BARCLAY.

ADDITIONAL ARTICLE.

Grace to the only God.

I, the underwritten, the servant of God, Taher Ben Abdelkack Tennish, do certify, that his imperial majesty, my master (whom God preserve) having concluded a treaty of peace and commerce with the United States of America, has ordered me, the better to complete it, and in addition to the tenth article of the treaty, to declare, "that, if any vessel belonging to the

" United States shall be in any of the ports of his ma-
" jesty's dominions, or within gun shot of his forts, she
" shall be protected as much as possible ; and no ves-
" sel whatever, belonging either to Moorish or chris-
" tian powers, with whom the United States may be at
" war, shall be permitted to follow or engage her, as
" we now deem the citizens of America our good
" friends."

And, in obedience to his majesty's commands, I certify this declaration, by putting my hand and seal to it, on the 18th day of Ramadan, in the year 1200.

(Signed)

The servant of the king my master, whom God preserve.

TAHER BEN ABDELKACK TENNISH.

I do certify that the above is a true copy of the translation made at Morocco, by Isaac Cordoza Nunnez, interpreter, of a declaration made and signed by Sidi Hage Taher Tennish, in addition to the treaty between the emperor of Morocco and the United States of America, which declaration the said Taher Tennish made by the express directions of his majesty.

(Signed) THOMAS BARCLAY.

And whereas the said John Adams and Thomas Jefferson, ministers plenipotentiary aforesaid, by writing under their respective hands and seals, duly made and executed by the said John Adams, on the 25th January, 1787, and by the said Thomas Jefferson, on the first day of January, 1787, did approve and conclude the

said treaty, and every article and clause therein contained; reserving the same nevertheless to the United States in Congress assembled for their final ratification. Now be it known, that we the said United States of America in Congress assembled have accepted, approved, ratified and confirmed, and by these presents do accept, approve, ratify and confirm the said treaty, and every article and clause thereof.

In testimony whereof we have caused our seal to be hereunto affixed.—Witness his excellency Arthur St. Clair, our President, at the city of New York, this 18th day of July, in the year of our Lord, 1787, and in the 12th year of our sovereignty and independence.

Ordered, That the secretary for foreign affairs prepare the draft of a letter of thanks to his catholick majesty for his good offices in promoting a treaty between the United States of America and the emperor of Morocco.

Ordered, That the secretary for foreign affairs prepare the draft of a letter to the emperor of Morocco, to accompany the ratification of the treaty with his majesty.

On a report of the secretary for foreign affairs, to whom was referred a petition of H. Stevens,

Resolved, That the honourable T. Jefferson, esquire, the minister of the United States at the court of Versailles, be and he is hereby authorized, to take such measures as he may deem most advisable for redeeming the American captives at Algiers; and at any

expense not exceeding that which European nations usually pay in like cases.

Resolved, That the board of treasury be and they are hereby directed, to provide ways and means for enabling Mr. Jefferson to defray the said expenses, either by remitting money from hence, or by a credit in Europe.

JULY 20, 1787.

On the report of a committee, consisting of Mr. Kean, Mr. R. H. Lee and Mr. Dane, to whom was referred a report of the secretary for foreign affairs, of the 23d April last, respecting instructions to the minister of the United States at the court of London,

Resolved, That the minister of the United States at the court of Great Britain be and he is hereby instructed, to inform his Britannick majesty that Congress have taken measures for removing all cause of complaint relative to the infraction of the fourth and sixth articles of the treaty of peace; and that he communicate to his majesty their resolutions of the 21st March last, together with their circular letter to the states, of the 13th day of April.

Resolved, That the said minister be and he hereby is authorized and directed, in the name and behalf of the United States, to propose and conclude a convention with his Britannick majesty, whereby it shall be agreed that the value of slaves, or other American property carried away contrary to the seventh article of the treaty of peace, be estimated by commissioners; and that he also endeavour to obtain an article to fix

the true construction of the declaration for ceasing hostilities, and to stipulate that compensation be made for all captures contrary to it.

Resolved, That the said minister be and he hereby is further instructed, to assure his majesty that it will always give pleasure to Congress fairly to discuss and accommodate every difference or complaint that may arise relative to the construction, or to the performance of the treaty: that they are determined to execute it with good faith: and that as this is the only instance in which any complaints have come regularly before them, they flatter themselves that the readiness with which they have taken measures to remove these complaints will create in him a full confidence in the purity of their intentions: and that he assure his majesty, that they fully repose and confide in his assurances "that whenever America shall manifest a real deter- "mination to fulfil her part of the treaty, Great Britain "will not hesitate to co-operate in whatever points de- "pend upon her for carrying every article into real "and complete effect."

In debating the foregoing resolutions, a motion was made by Mr. Smith, seconded by Mr. Grayson, to amend the second resolution by adding thereto as follows, after the word "commissioners:"

"And that payment for the same, together with a "surrender of all the posts and places now held by his "majesty within the limits of the United States, shall "be made within a certain reasonable time after the "several states shall have passed an act or acts in "conformity to the resolutions before mentioned, and "formal notice shall be given his majesty that all the

"states have passed an act or acts as above men-
"tioned."

A motion was made by Mr. Dane, seconded by Mr. Carrington, to amend the amendment by striking out the words "together with a surrender of all the posts "and places now held by his majesty within the limits "of the United States."

And on the question shall those words stand, the yeas and nays being required by Mr. Smith—

Massachusetts,	Mr. Holten,	No.	No.
	Mr. Dane,	No.	
New York,	Mr. Smith,	Ay.	No.
	Mr. Haring,	No.	
	Mr. Yates,	No.	
New Jersey,	Mr. Clarke,	No.	No.
	Mr. Scheurman,	No.	
Pennsylvania,	Mr. St. Clair,	No.	No.
	Mr. Irwine,	No.	
Delaware,	Mr. Kearny,	No.	No.
	Mr. Mitchell,	No.	
Virginia,	Mr. Grayson,	Ay.	Ay.
	Mr. R. H. Lee,	Ay.	
	Mr. Carrington,	No.	
North Carolina,	Mr. Blount,	No.	No.
	Mr. Hawkins,	No.	
South Carolina,	Mr. Kean,	No.	No.
	Mr. Huger,	No.	
Georgia,	Mr. Few,	No.	No.
	Mr. Pierce,	No.	

So it passed in the negative, and the words were struck out.

And the question to agree to the amendment as amended was negatived.

JULY 23, 1787.

On a report of the secretary for foreign affairs, Congress agreed to the following letter to the emperor of Morocco:

GREAT AND MAGNANIMOUS FRIEND,

We have received the letter which your imperial majesty did us the honour to write, dated the first of the month Ramadan, 1200.

We have likewise received the treaty concluded on our behalf with your majesty, and we have expressed our perfect approbation of it by ratifying, and publishing, and ordering it to be faithfully observed and fulfilled by all our citizens.

It gives us great pleasure to be on terms of peace and amity with so illustrious a sovereign. And we flatter ourselves that the commerce of these distant regions with your majesty's dominions will gradually become more and more beneficial to both; especially after our navigation shall cease to be interrupted by the hostilities of the neighbouring states in Africa.

Your majesty's early and friendly attention to these new and rising states, the obliging manner in which you received and treated our negotiator, Thomas Barclay, and the liberal and disinterested terms on which your majesty entered into treaty with us, are

strong and shining proofs of a great mind; proofs which will remain recorded in our annals, and which will always render your majesty's name respected and glorious in these western countries.

These distinguished marks of your majesty's good will towards us inspire us with perfect confidence in your friendship, and induce us to request your favourable interposition to incline Algiers, Tunis and Tripoli to peace with us, on such terms as may consist with our honour, and with the circumstances of our new and distant states.

Should your majesty's mediation be the means of putting the United States at peace with their only remaining enemies, it would be an event so glorious and memorable, that your majesty's reign would thence derive additional lustre, and your name not only become more and more dear to our citizens, but more and more celebrated in our histories.

We, your majesty's friends, pray God to bless you.

Done by the United States in Congress assembled, at the city of New York, the twenty-third day of July, in the year of our Lord, one thousand seven hundred and eighty-seven.

The secretary having further reported, that from paper No. 5, being a translation of a letter from the emperor of Morocco to the king of Spain, and from Mr. Barclay's letter, of 15th November, 1786, as well as from various other documents, it appears that his catholick majesty has in the most friendly and effectual manner interposed his good offices in behalf of the United States of America with the emperor of Morocco, and

that to this interposition the success of their negotiations with his imperial majesty is in a great degree to be ascribed: Thereupon,

Resolved, That Congress entertain a high sense of the friendship which his catholick majesty has manifested for the United States of America on various occasions, and particularly in the decided, kind and effectual manner in which he facilitated and promoted their negotiations for a treaty of peace and commerce with his imperial majesty of Morocco, as well by writing directly to the emperor in their favour, as by affording such collateral countenance and aid as circumstances rendered expedient, and his desire of promoting the success of the negotiation prompted.

Resolved, therefore, That the thanks of the United States are justly due to his catholick majesty; that they be conveyed in a letter from Congress, expressing their acknowledgments in the most explicit terms, and assuring his majesty of their earnest desire to cultivate his friendship by such attentions as occasions may put in their power, and as may best evince the high respect, esteem and attachment with which such repeated marks of his friendship have impressed them.

That the letter be in the following terms:

GREAT AND BELOVED FRIEND,

Various circumstances having long delayed our receiving and ratifying the treaty concluded in our behalf with the emperor of Morocco, we take the earliest opportunity of manifesting to your majesty the high and grateful sense we entertain of that kind, decided, and effectual interposition of your majesty with the empe-

ror in our favour, to which we are so greatly indebted for the successful issue of our negotiations with him. Permit us, therefore, to present to your majesty our sincere and unanimous thanks for that important mark of your friendship, as well as for the many other friendly offices with which your majesty has on various occasions been pleased to favour us; and to assure you of our earnest desire to embrace every opportunity of evincing the respect, esteem and attachment with which your majesty's kind attentions to the United States have impressed us.

We pray God to bestow the best blessings on your majesty, your family and people.

Done by the United States in Congress assembled, at the city of New York, the twenty-third day of July, in the year of our Lord, one thousand seven hundred and eighty-seven.

The secretary having further reported, that from the papers No. 6. and others, it appears that Thomas Barclay, esquire, has, in the conduct of the negotiation with the emperor of Morocco, manifested a degree of prudence, address and disinterestedness which, in the opinion of the secretary, merit the approbation of Congress: Thereupon,

Resolved, That Congress are well pleased with the conduct of Thomas Barclay, esquire, in the course of the negotiations on the part of the United States with his imperial majesty of Morocco, as detailed and represented in his and other letters and papers transmitted to them.

The secretary having further reported, that in his opinion copies of the paper No. 6, which contains the signals agreed upon between the United States and Morocco, by which their respective vessels are to be known to each other at sea, should be sent to the executives of the different states, to the end that copies may be given to such American masters of vessels as may thence make voyages, in the course of which they may expect to meet with the cruisers from Morocco—

Resolved, That Congress agree to this part of the report, and that the same together with paper No. 6, be referred to the secretary for foreign affairs to take order thereon.

The secretary having further reported, that the paper No. 11 contains Mr. Barclay's commission to don Francisco Chiappi, at Morocco, constituting him the American agent at that place until the will and pleasure of Congress shall be known; and also the names of other agents to whom he gave similar commissions for Mogadore and Tangier; and that in his opinion these commissions should be confirmed—

Resolved, That Congress approve the appointment made in their behalf, by Thomas Barclay, esquire, with the approbation of his imperial majesty of Morocco, of don Francisco Chiappi to be their agent at Morocco, of don Joseph Chiappi to be their agent at Mogadore, and of don Giralamo Chiappi to be their agent at Tangier; and that they respectively hold the said places during the pleasure of Congress, notwithstanding the resolution of the 16th March, 1784.

The secretary having further reported, that in his opinion it will be expedient to transmit the letter for

his imperial majesty to Mr. Jefferson, to be by him forwarded to don Francisco Chiappi, at Morocco; with instructions to present it to the emperor. That he prefers sending it by the way of France, because he thinks it may thence be conveyed with the minister's despatches to their consul, with more care and safety than it could be sent from London; and he thinks it most proper that it should pass through the hands of one of the ministers under whose direction the negotiation of the emperor had been placed. That in his opinion it would also be proper to instruct the said ministers to maintain a regular correspondence with the said agents, in order that they and Congress may be seasonably informed of every event and occurrence at the court of Morocco that may affect the interest of the United States. That it appears from the paper No. 10, that Taher Tennish was a friendly and important man in the conducting of the negotiation; and that the emperor's consent to a material article in the treaty was owing to a friendly observation made by the emperor's preacher. That in his opinion it is not only right in itself, but the most certain way to confirm and increase friends, to acknowledge and reward acts of friendship; and therefore he thinks it might be well for him to write a letter to Taher Tennish, letting him know that Congress have been informed of his attentions to their envoy, and that they are exceedingly pleased with the probity, candour and liberality which distinguished his conduct on that occasion. And that a compliment might also be paid in the same letter to the liberality and benevolence of the emperor's preacher—

Ordered, That this part of the report be referred back to the secretary for foreign affairs to take order; and that the rest of the report be postponed.

JULY 24, 1787.

The secretary of the United States for the department of foreign affairs, to whom were referred the letters of Mr. Dumas respecting the house of the United States at the Hague, having reported,

That by Mr. Dumas's letter of 17th November, 1786, Congress are informed that the house is in a suffering condition; that it is charged with a tax of one hundred and sixty-seven florins per annum; that the care of it causes some expenses; that it should in his opinion be either repaired and inhabited, or sold; and that he (Mr. Dumas) cannot occupy it without a formal order. That as any change of measure not dictated by a change of circumstances seems to argue either want of consideration in adopting them, or want of constancy to adhere to them, and as the United States have thought proper to purchase the house in question for the residence of their minister, in his opinion it would not be expedient to order it to be sold, as well for the reasons abovementioned, as because such order, if in other respects proper, would be unseasonable at present; for it would look as if the United States intended either to have no resident minister there in future, or as if the present troubles of the republick, or the present state of their own finances had, in some degree, influenced the measure. That it would be advisable to put Mr. Dumas into the house,

as thereby the expense of taking care of it will be avoided, and that gentleman obliged: Whereupon,

Resolved, That Mr. Dumas be permitted to occupy and reside in the house of the United States at the Hague, until a minister of the United States shall arrive there, or until the further order of Congress; And that Mr. Adams do direct such repairs to be made at the expense of the United States to the said house as may be really necessary to render it tenantable.

The secretary having farther reported, That the repeated mention which Mr. Dumas makes of his accounts, and of the arrearages due to him, induces him to take the liberty of hinting whether it would not be best to direct that his accounts be settled, and that his little stipend be regularly paid to him,

Ordered, That this part of the report be referred to the board of treasury to take order.

JULY 27, 1787.

A motion being made by Mr. Grayson, seconded by Mr. Kean, That the minister plenipotentiary of the United States at the court of France be directed to form a confederacy with the powers of Europe who are now at war with the piratical states of Algiers, Tripoli and Tunis, or may be disposed to go to war with them, for the purchase [purpose] of protecting and securing the citizens and subjects of the contracting parties in the free navigation of the Mediterranean sea. That it be an article in the said confederation, that none of the contracting parties shall make peace with any of the said piratical states in which the

whole confederacy shall not be included; and in case a general peace shall be concluded between the belligerent powers, that the whole confederacy shall be guarantees of the same; and in case of an aggression on the part of the said piratical states, they shall be obligated to have justice done by recommencing hostilities and continuing the same until the end is effected. That there be an article stipulating the quotas of the different powers in men and shipping, ascertaining their stations at different periods, and fixing the general command in such manner as may best secure the desired object—They at the same time moved that the above motion be referred to the secretary for foreign affairs to report:

And on the question for reference, the yeas and nays being required by Mr. Grayson—

Massachusetts,	Mr. Holten,	Ay.	Ay.
	Mr. Dane,	Ay.	
Rhode Island,	Mr. Varnum,	Ay.	×
New York,	Mr. Smith,	Ay.	Ay.
	Mr. Haring,	Ay.	
	Mr. Yates,	No.	
New Jersey,	Mr. Clark,	No.	No.
	Mr. Scheurman,	No.	
Pennsylvania,	Mr. St. Clair,	Ay.	Ay.
	Mr. Irwine,	Ay.	
Delaware,	Mr. Kearny,	Ay.	Ay.
	Mr. Mitchell,	Ay.	

Virginia,	Mr. Grayson,	Ay.	Ay.
	Mr. R. H. Lee,	Ay.	
	Mr. Carrington,	Ay.	
North Carolina,	Mr. Blount,	Ay.	Ay.
	Mr. Hawkins,	Ay.	
South Carolina,	Mr. Kean,	Ay.	×
Georgia,	Mr. Few,	Ay.	Ay.
	Mr. Pierce,	Ay.	

So it was resolved in the affirmative.

The secretary for foreign affairs having written to Congress as follows:

Office for Foreign Affairs, July 27, 1787.

SIR,

I have the honour of transmitting to your excellency herewith enclosed, a letter of 23d instant from the governour of Rhode Island, together with a number of papers which were delivered to me with it. This letter and these papers respect a sloop of that state called the Sally, which in the month of March last, putting into Tobago in distress, as is represented, was there seized and condemned and sold. An appeal was made and granted from the sentence to the admiralty in France. As the cause is in the regular course of judicial inquiry, I think the papers should be returned, and that Congress can at present do nothing more than direct me to send a copy of the governour's letter to Mr. Jefferson, and instruct him to afford the appellants such protection and aid as circumstances may render proper. In case their state of facts should prove well

founded, and the sentence be reversed, it would also in my opinion be well for him to intimate to the minister the expediency of more caution in their officers; for that the sentiments as well as the commerce of America must naturally be affected by instances of such licentious severities—

Ordered, That the said letter, with the papers accompanying it, be referred back to the secretary for foreign affairs to take order.

The secretary of the United States for the department of foreign affairs, to whom was referred a letter of 14th February last, from the honourable Mr. Jefferson, having reported,

That he presumes the following paragraph in this letter gave occasion to its being referred to him, viz.

"The workman who was to make that of general Greene, brought me yesterday the medal in gold, twenty-three in copper, and the die. I must beg leave through you to ask the pleasure of Congress as to the number they would choose to have struck. Perhaps they might be willing to deposit one of each person in every college of the United States. Perhaps they might choose to give a series of them to each of the crowned heads in Europe, which would be an acceptable present to them. They will be pleased to decide. In the mean time I have sealed up the die, and shall retain it till I am honoured with their orders as to this medal, and the others also when they shall be finished."

As these medals were directed to be struck in order to signalize and commemorate certain interesting events and conspicuous characters, the distribution of them should in his opinion be such as

may best conduce to that end. He therefore thinks that both of Mr. Jefferson's hints should be improved, to wit, that a series of these medals should be presented to each of the crowned heads in Europe, and that one of each set be deposited in each of the American colleges. He presumes that Mr. Jefferson does not mean that any should be presented to the king of Great Britain, for it would not be delicate; nor that by crowned heads he meant to exclude free states from the compliment, for to make discriminations would give offence. In the judgment of the secretary, it would be proper to instruct Mr. Jefferson to present, in the name of the United States, one silver medal of each denomination to every monarch, (except his Britannick majesty,) and to every sovereign and independent state without exception in Europe, and also to the emperor of Morocco. That he also be instructed to send fifteen silver medals of each set to Congress, to be by them presented to the thirteen United States respectively; and also to the emperor of China, with an explanation and a letter; and one to general Washington. That he also be instructed to present a copper medal of each denomination to each of the most distinguished universities, except the British, in Europe; and also to count Rochambeau, to count d'Estaing, and to count de Grasse. And lastly, that he be instructed to send to Congress two hundred copper ones of each set, together with the dies.

The secretary thinks that of these it would be proper to present one to each of the American colleges, one to the marquis de la Fayette, and one to each of the other major generals who served in the late Ameri-

can army; and that the residue, with the dies, be deposited in the secretary's office of the United States, subject to such future orders as Congress may think proper to make respecting them. It might be more magnificent to give golden medals to sovereigns, silver ones to distinguished persons, and copper to the colleges, &c.; but in his opinion the nature of the American governments as well as the state of their finances will apologize for their declining the expense.

Ordered, That this report be referred back to the secretary for foreign affairs to take order.

The secretary of the United States for the department of foreign affairs, to whom was referred that part of Mr. Jefferson's letter of the 9th January last, which relates to the consular convention, viz. "I will "certainly do the best I can for the reformation of the "consular convention, being persuaded that our states "would be very unwilling to conform their laws either "to the convention, or to the scheme; but it is too "difficult and too delicate to form sanguine hopes; "however, that there may be room to reduce the con-"vention as much as circumstances will admit, will it "not be expedient for Congress to give me powers, "in which there shall be no reference to the scheme? "The powers sent me oblige me to produce that "scheme; and certainly the moment it is produced, "they will not abate a tittle from it. If they recollect "the scheme and insist on it, we can but conclude it; "but if they have forgotten it (which may be) and "are willing to reconsider the whole subject, perhaps "we may get rid of something the more of it. As the "delay is not injurious to us, because the convention,

" whenever and however made, is to put us in a worse " state than we are in now, I shall venture to defer " saying a word on the subject till I can hear from you " in answer to this. The full powers may be suffi- " ciently guarded by private instructions to me not " to go beyond the former scheme. This delay may " be well enough ascribed (whenever I shall have re- " ceived new powers) to a journey I had before ap- " prised the minister that I should be obliged to take " to some mineral waters in the south of France, to see " if by their aid I may recover the use of my right " hand, of which a dislocation about four months ago " threatens to deprive me in a great measure. The " surgeons have long insisted on this measure. I shall " return by Bourdeaux, Nantes and L'Orient to get " the necessary information for finishing our com- " mercial regulations here. Permit me however to ask, " as immediately as possible, an answer either affir- " mative or negative, as Congress shall think best :" having reported,

That in his opinion the court of France regard the consular convention in its present form as an interesting object, and that no article or provision in it will escape their recollection. He nevertheless thinks that the policy of yielding to such circumstances as cannot without risk and hazard be neglected or controlled will induce them at least to consent to the proposed article for limiting the duration of the convention. And as he perceives no inconvenience likely to result from giving Mr. Jefferson a commission, authorizing him in general terms to negotiate and conclude a convention with his most christian majesty for

ascertaining the authority and powers of French and American consuls, he thinks it will be advisable to send him such a commission, that he may thereby have an opportunity of endeavouring to realize the advantages he expects from it, and which under a new administration (perhaps not well advised of what has passed) may be attainable: Whereupon,

Resolved, That a commission of the following tenor be sent to Mr. Jefferson, viz.

> We the United States of America in Congress assembled, at the city of New York—To our well beloved Thomas Jefferson, esquire, our minister plenipotentiary at the court of his most christian majesty, &c. &c. send greeting.

Being desirous to promote and facilitate the commerce between our states and the dominions of his said majesty, and for that purpose to conclude with him a convention for regulating the privileges, powers and duties of our respective consuls, vice consuls, agents and commissaries; and having full confidence in your abilities and integrity, We do by these presents authorize and empower you, the said Thomas Jefferson, in our name and behalf, to treat with any person having equal powers from his most christian majesty, of and concerning such a convention, and the same in our name and behalf to conclude, sign and seal: And we do promise to ratify and confirm whatever convention shall in virtue of this commission be by you so concluded; provided the duration of the

same be limited to any term not exceeding twelve years.

Witness our seal and the signature of his excellency Arthur St. Clair, our President, this twenty-seventh day of July, in the year of our Lord, one thousand seven hundred and eighty-seven, and of our independence, the twelfth.

Ordered, That the following letters be written to Mr. Jefferson, by the secretary for foreign affairs:

SIR,

Congress being desirous that the commerce between the United States and France may be promoted by every reciprocal regulation conducive to that end, wish that no time may be lost in ascertaining the privileges, powers and duties of their respective consuls, vice consuls, and commercial agents and commissaries.

They regret the circumstance which calls you to the south of France, but are perfectly satisfied that you should make that or any other journey which your health may require. It is their wish and instruction, that on your return to the court, your attention may be immediately directed to the abovementioned subject. Considering that conventions of this nature, however apparently useful in theory, may from some defects or unforeseen circumstances, be attended with inconveniences in practice, they think it best that they should be probationary at least, in the first instance, and therefore that the term to be assigned for the duration of the one in question should not exceed twelve years. They also think it advisable, in order to ob-

viate any difficulties that might arise from your not having been more formally authorized to complete this business, to give you an express and special commission for the purpose, which I have now the honour to enclose.

SIR,

You will herewith receive another letter from me, of this date, together with the commission mentioned in it. Both of them are in pursuance of the ideas suggested in your letter of the 9th January last. If the whole subject should be reconsidered, and a new convention formed, it is the pleasure of Congress that the duties, powers and privileges of consuls, vice consuls, agents and commissaries be accurately delineated, and that they be as much circumscribed and limited as the proper objects of their appointment will admit, and the court of France shall consent to. How far it may be in your power to obtain a convention perfectly unexceptionable, must depend on several circumstances not yet decided. Congress confide fully in your talents and discretion; and they will ratify any convention that is not liable to more objections than the one already in part concluded; provided an article limiting its duration to a term not exceeding twelve years be inserted.

AUGUST 1, 1787.

The secretary of the United States for the department of foreign affairs, to whom were referred two letters from the honourable John Adams, of the 24th

and 27th January last, having reported, that in his opinion it would be proper to resolve, "That the ho- "nourable J. Adams, the minister plenipotentiary of "the United States at the court of London, be permit- "ted, agreeably to his request, to return to America at "any time after the 24th February, 1788; and that "his commission of minister plenipotentiary to their "high mightinesses do also then determine:" and the same being under consideration, a motion was made by Mr. Dane, seconded by Mr. Clarke, to amend it by inserting immediately after 1788, the words following, viz. "and that a person be appointed to take charge "of the affairs of the American legation at the court of "London, from the expiration of the commission of "the present minister to the arrival there of another "minister to succeed him, or until the further order of "Congress:"

On the question to agree to this amendment, the yeas and nays being required by Mr. Dane—

Massachusetts,	Mr. Holten, Mr. Dane,	Ay. Ay.	Ay.
Rhode Island,	Mr. Varnum,	No.	×
New York,	Mr. Haring, Mr. Yates,	Ay. Ay.	Ay.
New Jersey,	Mr. Clarke, Mr. Scheurman,	Ay. No.	Divided.
Pennsylvania,	Mr. St. Clair, Mr. Irwine,	Ay. No.	Divided.
Delaware,	Mr. Kearny, Mr. Mitchell,	Ay. No.	Divided.

Virginia,	Mr. Grayson,	No.	No.
	Mr. R. H. Lee,	Ay.	
	Mr. Carrington,	No.	
North Carolina,	Mr. Blount,	No.	No.
	Mr. Hawkins,	No.	
South Carolina,	Mr. Kean,	Ay.	Divided.
	Mr. Huger,	No.	
Georgia,	Mr. Few,	No.	No.
	Mr. Pierce,	No.	

So the question was lost.

The proposition of the secretary for foreign affairs being divided, on the question to agree to the first part as far as "1788" inclusive, the yeas and nays being required by Mr. Grayson—

Massachusetts,	Mr. Holten,	No.	No.
	Mr. Dane,	No.	
Rhode Island,	Mr. Varnum,	Ay.	><
New York,	Mr. Haring,	Ay.	Divided.
	Mr. Yates,	No.	
New Jersey,	Mr. Clarke,	Ay.	Ay.
	Mr. Scheurman,	Ay.	
Pennsylvania,	Mr. St. Clair,	No.	Divided.
	Mr. Irwine,	Ay.	
Delaware,	Mr. Kearny,	Ay.	Ay.
	Mr. Mitchell,	Ay.	
Virginia,	Mr. Grayson,	Ay.	Ay.
	Mr. R. H. Lee,	No.	
	Mr. Carrington,	Ay.	

North Carolina,	Mr. Blount,	Ay.	Ay.
	Mr. Hawkins,	Ay.	
South Carolina,	Mr. Kean,	No.	Divided.
	Mr. Huger,	Ay.	
Georgia,	Mr. Few,	Ay.	Ay.
	Mr. Pierce,	Ay.	

So the question was lost.

SEPTEMBER 24, 1787.

* The secretary of the United States for the department of foreign affairs, to whom were referred two letters from the honourable John Adams, of the 24th and 27th of January last, having reported that the first of these letters gives occasion to several questions:

1. Shall Mr. Adams return after the expiration of his commission to the court of London, viz. the 24th February, 1788?

And having on this reported, that he is persuaded Mr. Adams really wishes and means to return next spring: Whereupon,

Resolved, That the honourable John Adams, the minister plenipotentiary of the United States at the court of London, be permitted, agreeably to his request, to return to America at any time after the 24th of February, in the year of our Lord, 1788; and that his commission of minister plenipotentiary to their high mightinesses do also then determine.

* September 25, 1787, this whole business reconsidered, and to be removed.

The secretary having also reported the following resolution:

That Congress entertain a high sense of the services which Mr. Adams has rendered to the United States in the execution of the various important trusts which they have from time to time committed to him: And that the thanks of Congress be presented to him for the patriotism, perseverance, integrity and diligence with which he has ably and faithfully served his country—

A motion was made by Mr. Henry Lee, seconded by Mr. Blount, that the consideration of this be postponed. And on the question for postponement, the yeas and nays being required by Mr. King—

Massachusetts,	Mr. Gorham,	No.	No.
	Mr. King,	No.	
	Mr. Dane,	No.	
Connecticut,	Mr. Johnson,	No.	No.
	Mr. Cook,	No.	
New York,	Mr. Smith,	No.	No.
	Mr. Haring,	No.	
	Mr. Yates,	No.	
New Jersey,	Mr. Cadwallader,	Ay.	No.
	Mr. Clarke,	No.	
	Mr. Scheurman,	No.	
Pennsylvania,	Mr. St. Clair,	No.	Ay.
	Mr. Irwine,	Ay.	
	Mr. Bingham,	Ay.	
	Mr. Armstrong,	Ay.	
Delaware,	Mr. Kearny,	Ay.	Ay.
	Mr. Mitchell,	Ay.	
Maryland,	Mr. Ross,	Ay.	×

Virginia,	Mr. Grayson,	Ay.	Divided.
	Mr. R. H. Lee,	No.	
	Mr. Carrington,	No.	
	Mr. H. Lee,	Ay.	
North Carolina,	Mr. Blount,	Ay.	Ay.
	Mr. Burton,	Ay.	
South Carolina,	Mr. Kean,	Ay.	Ay.
	Mr. Huger,	Ay.	
	Mr. Butler,	No.	
Georgia,	Mr. Few,	Ay.	Ay.
	Mr. Pierce,	Ay.	

So the question was lost.

A division was then called for; and on the question to agree to the first clause as far as the word "him" inclusive, the yeas and nays being required by Mr. King—

Massachusetts,	Mr. Gorham,	Ay.	Ay.
	Mr. King,	Ay.	
	Mr. Dane,	Ay.	
Connecticut,	Mr. Johnson,	Ay.	Ay.
	Mr. Cook,	Ay.	
New York,	Mr. Smith,	Ay.	Ay.
	Mr. Haring,	Ay.	
	Mr. Yates,	Ay.	
New Jersey,	Mr. Cadwallader,	No.	Ay.
	Mr. Clarke,	Ay.	
	Mr. Scheurman,	Ay.	
Pennsylvania,	Mr. St. Clair,	Ay.	No.
	Mr. Irwine,	No.	
	Mr. Bingham,	No.	
	Mr. Armstrong,	No.	

Delaware,	Mr. Kearny,	No.	No.
	Mr. Mitchell,	No.	
Maryland,	Mr. Ross,	Ay.	×
Virginia,	Mr. Grayson,	No.	Divided.
	Mr. R. H. Lee,	Ay.	
	Mr. Carrington,	Ay.	
	Mr. H. Lee,	No.	
North Carolina,	Mr. Blount,	Ay.	Divided.
	Mr. Burton,	No.	
South Carolina,	Mr. Kean,	Ay.	Ay.
	Mr. Huger,	No.	
	Mr. Butler,	Ay.	
Georgia,	Mr. Few,	Ay.	Ay.
	Mr. Pierce,	Ay.	

So the question was lost.

On the motion to agree to the second clause, the yeas and nays being required by Mr. King—

Massachusetts,	Mr. Gorham,	Ay.	Ay.
	Mr. King,	Ay.	
	Mr. Dane,	Ay.	
Connecticut,	Mr. Johnson,	Ay.	Ay.
	Mr. Cook,	Ay.	
New York,	Mr. Smith,	Ay.	Ay.
	Mr. Haring,	Ay.	
	Mr. Yates,	Ay.	
New Jersey,	Mr. Cadwallader,	No.	Ay.
	Mr. Clarke,	Ay.	
	Mr. Scheurman,	Ay.	
Pennsylvania,	Mr. St. Clair,	Ay.	No.
	Mr. Irwine,	No.	
	Mr. Bingham,	No.	
	Mr. Armstrong,	No.	

Delaware,	Mr. Kearny,	No.	No.
	Mr. Mitchell,	No.	
Maryland,	Mr. Ross,	Ay.	×
Virginia,	Mr. Grayson,	No.	Divided.
	Mr. R. H. Lee,	Ay.	
	Mr. Carrington,	Ay.	
	Mr. H. Lee,	No.	
North Carolina,	Mr. Blount,	No.	No.
	Mr. Burton,	No.	
South Carolina,	Mr. Kean,	No.	No.
	Mr. Huger,	No.	
	Mr. Butler,	Ay.	
Georgia,	Mr. Few,	No.	No.
	Mr. Pierce,	No.	

So the question was lost.

The secretary having further reported, That the second question arising from the letter is, Whether it will be expedient for the United States to appoint another minister to take the place of Mr. Adams at the court of London. And on this head, having given his opinion that it will be expedient to appoint another, because there do exist differences between the United States and the court of London, which cannot too soon be adjusted, which must become the subject of occasional explanations and negotiations, and which on the part of the United States cannot be so well managed and conducted as by means of an intelligent and discreet minister on the spot. Your secretary's feelings strongly prompt him to retaliate the neglect of Britain in not sending a minister

here; but as he conceives that such retaliation would eventually produce more inconveniences than advantages, he thinks it had better be omitted; especially as he is persuaded that this neglect will cease, the moment that the American government and the administration of it, shall be such as to impress other nations with a degree of respect, which various circumstances deny to Congress the means of imposing at present. He thinks it should be the policy of the United States, at present, to keep all things as smooth and easy, and to expose themselves to as few embarrassments as possible, until their affairs shall be in such a posture as to justify and support a more nervous style of conduct and language. Britain disputes the eastern boundary of the United States; she holds important posts and territories on the frontiers; and she complains that the treaty of peace has been violated by America. These affairs are important, and the management of them requires prudence and temper, especially considering how little the actual state of our national affairs tends to repress the influence, either of unfriendly dispositions and passions, or of that kind of policy which the weakness of neighbours is very apt to suggest and promote: and that if Congress concur in the opinion, that a minister should succeed Mr. Adams, a resolution like the following would perhaps be the most proper, viz.

Whereas divers important affairs still remain to be arranged and adjusted between his Britannick majesty and the United States, which on their part cannot be so well conducted as by means of a minister plenipotentiary at the court of London: Therefore,

Resolved, That a minister plenipotentiary to reside at that court be appointed; and that his commission take effect on the 25th day of February, 1788, and continue in force for the space of three years thereafter, unless sooner revoked.

On motion,

Ordered, That the consideration of this part of the report be postponed.

SEPTEMBER 28, 1787.

The secretary of the United States for the department of foreign affairs, to whom was referred a letter of the 16th August, 1787, from sir John Temple, the British consul general, having reported,

That this letter states, that a relation at Canton sent him in the Hope, lately arrived at this port, a small box of tea, and a piece of silk for lady Temple's use; that he sent for them, and that the collector returned for answer, "That as there was no treaty of commerce "subsisting between his Britannick majesty and these "states, sir John must pay the impost or duties charg-"ed upon such articles by the government of the state "of New York." Sir John requests to be informed, whether or not it be right and proper for him to pay the duties so demanded.

Two things in this letter merit attention: first, the implied claim of the consul to an exemption from duties; and, secondly, the reason assigned by the collector for demanding the ordinary duties in the present case.

The respect due from nation to nation, and from sovereign to sovereign, has introduced among civilized nations the general custom and usage of exempting ambassadors and publick ministers from duties and imposts. The only question on this point which merits attention is, whether consuls are to be considered in this light?

In the opinion of your secretary, consuls are not by the laws or usage of nations, considered or treated as publick ministers; and therefore that they are not entitled to the exemptions in question, either here or elsewhere.

It would seem from the collector's answer, that he considers the *other* consuls, between whose nations and the United States treaties of commerce exist, as entitled to such exemptions; and therefore your secretary is inclined to think it would be expedient for Congress to correct that mistake. It appears from general experience that this privilege to ambassadors and ministers has produced many inconveniences, and is daily attended with great abuses; insomuch that some nations have found it necessary to take measures to guard against and check them.

In France, it is usual for ministers to report the articles intended to be introduced, and the government pays the duties to the farmers; and a late instance of an ambassador at the court of London, importing eight hundred dozen of wine at one time for the use of his table, and shortly after disposing of five hundred dozen of them to grocers, has called the attention of the ministry to the necessity of establishing regulations on the subject; but what they will be, is not yet de-

cided. If such inconveniences result from such a privilege to a few ambassadors and ministers, men high in office and reputation, and whose situations render such practices particularly indecent and improper; it is easy to foresee how much greater and more extensive evils would result from similar indulgences to the numerous consuls to be found in every commercial country disposed to admit them. Whereupon Congress came to the following resolution:

Whereas doubts have in certain instances arisen, whether foreign consuls residing in the United States are entitled to an exemption from such legal imposts and duties on merchandises by them imported for their own use, as are payable by other subjects of their respective nations,

Resolved, That no consuls of any nation are entitled to such exemptions in the United States.

OCTOBER 2, 1787.

The board of treasury, to whom was referred an extract of a letter from the honourable Mr. Jefferson, minister plenipotentiary to the court of France, having reported,

That the said minister states, "That a proposition "has been made to monsieur De Calonne, minister of "the finances of France, by a company of Dutch mer- "chants, to purchase the debt due from the United "States to the crown of France; giving for the said "debt, amounting to twenty-four million of livres, the "sum of twenty million of livres. That information "of this proposition has been given to him by the

" agent of the said company, with the view of ascer-
" taining whether the proposed negotiation should be
" agreeable to Congress."

That the said minister suggests, " That if there is
" danger of the publick payments not being punctual,
" whether it might not be better that the discontents
" which would then arise, should be transferred from
" a court, of whose good will we have so much need,
" to the breasts of a private company.

" That the credit of the United States is sound in
" Holland; and that it would probably not be difficult
" to borrow in that country the whole sum of money
" due to the court of France; and to discharge that
" debt without any deduction, thereby doing what
" would be grateful to the court, and establishing with
" them a confidence in our honour."

On a mature consideration of the circumstances abovementioned, the board beg leave to observe,

That at the time the debt due from the United States to the crown of France was contracted, it could not have been foreseen that the different members of the union would have hesitated to make effectual provision for the discharge of the same, since it had been contracted for the security of the lives, liberties and property of their several citizens, who had solemnly pledged themselves for its redemption; and that therefore the honour of the United States cannot be impeached for having authorized their minister at the court of France to enter into a formal convention, acknowledging the amount of the said debt, and stipulating for the reimbursement of the principal and interest due thereon.

That should the United States at this period give any sanction to the transfer of this debt, or attempt to make a loan in Holland for the discharge of the same, the persons interested in the transfer, or in the loan, would have reason to presume that the United States in Congress would make effectual provision for the punctual payment of the principal and interest.

That the prospect of such provision being made within a short period, is by no means flattering; and though the credit of the United States is still sound in Holland, from the exertions which have been made to discharge the interest due to the subscribers to the loans in that country, yet in the opinion of this board it would be unjust, as well as impolitick, to give any publick sanction to the proposed negotiation. Unjust, because the nation would contract an engagement without any well grounded expectation of discharging it with proper punctuality. Impolitick, because a failure in the payment of interest accruing from this negotiation (which would inevitably happen) would justly blast all hopes of credit with the citizens of the United Netherlands, when the exigencies of the union might render new loans indispensably necessary.

The board beg leave further to observe, that although a grateful sense of the services rendered by the court of France would undoubtedly induce the United States in Congress to make every possible exertion for the reimbursement of the moneys advanced by his most christian majesty, yet that they cannot presume, that it would tend to establish in the mind of the French court, an idea of the national honour of this country to involve individuals in a heavy loan, at a time

when Congress were fully sensible that their resources were altogether inadequate to discharge even the interest of the same, much less the instalments of the principal, which would from time to time become due. How far the idea of transferring the discontents which may prevail in the French court, for want of the punctual payment of interest, to the breast of the private citizens of Holland, would be consistent with sound policy, the board forbear to enlarge on.

It may be proper however to observe, that the publick integrity of a nation is the best shield of defence against any calamities to which, in the course of human events, she may find herself exposed.

This principle, so far as it respects the conduct of the United States in contracting the loans with France, cannot be called in question. The reverse would be the case, should the sanction of the United States be given, either to the transfer of the French debt, or to the negotiation of a loan in Holland, for the purpose of discharging it.

If it be further considered, that the consequences of a failure in the punctual payment of interest on the moneys borrowed by the United States, can by no means be so distressing to a nation, (and one powerful in resources,) as it would be to individuals, whose dependence for support is frequently on the interest of the moneys loaned, the board presume that the proposed negotiation cannot be considered at the present juncture in any point of view, either as eligible or proper. Under these circumstances they submit it as their opinion,

That it would be proper without delay to instruct the minister of the United States at the court of France not to give any sanction to any negotiation which may be proposed for transferring the debt due from the United States, to any state or company of individuals who may be disposed to purchase the same.

Resolved, That Congress agree to the said report.

OCTOBER 3, 1787.

The secretary of the United States for the department of foreign affairs, to whom was referred a letter of the first of August, from Reade and Bogardus, having reported,

That the object of the said letter is to represent the case of William Cannon, late master of the sloop Little Robert, from New York, belonging to Messrs. Reade and Bogardus, Peter Mesier and William Cannon, which case they state as follows, viz.

"A statement of facts that happened to William "Cannon, late master of the sloop Little Robert, from "New York, belonging to Reade and Bogardus, Peter "Mesier and William Cannon.

"On the 26th of May, 1787, he was lying at anchor "at the island of Heneauga, where he had been about "thirty hours, when the captain of a schooner called the "Vigilant, belonging to the customhouse of the island "of New Providence, came in his boat with a number "of men on board the said sloop, and made search "for supposed goods, merchandise or produce of the "island of Heneauga, when not finding any, he left the "sloop, and directed said Cannon not to lie longer than

"forty-eight hours at said island, or he would seize "his vessel and cargo; and in less than one hour after, "said Cannon got under way, and left the island afore- "said; and on the 30th May he returned there again, in "company with a French schooner, which came from "Aux Cayes, and had on board sugar, coffee, cotton "and cocoa of the produce of Hispaniola for the said "sloop Little Robert, when both of them came to an "anchor at about nine o'clock, and began shifting the "cargo from the schooner on board said sloop. That "about eleven o'clock she was boarded by the said "Vigilant's boat, with loaded muskets, pistols and cut- "lasses, and in boarding they killed one man, named "John Rodan, and much wounded another, named "William Bryan, of said Cannon's crew, without any "previous notice; after which they took possession of "both vessels, got up their anchors, and directly pro- "ceeded to New Providence, where said vessels and "cargoes were condemned and sold. The whole of "captain Cannon's stay at the island of Heneauga did "not exceed thirty-four hours; and the officer of the "Vigilant had declared to captain Cannon that he "would allow him forty-eight hours to do any thing "he might want to do to his vessel. The Vigilant, at "the time this seizure was made, had not a British "register, nor never was made a prize, and is now for "sale on that very account, being an American built "vessel since the peace."

Two causes of complaint result from these facts, viz. The unnecessary violence committed in the act of seizing the sloop; and secondly, the illegality of the seizure and condemnation of her.

As the facts on which the first complaint is grounded are not supported by any affidavits or proofs, that complaint does not as yet appear sufficiently authenticated to render a remonstrance to the British court on that head advisable; but your secretary having reason to believe that captain Cannon, who is now in town, is ready to depose to the truth of those facts, he thinks it might be well for him to take the captain's affidavit; and in case it should fully support the facts above stated relative to that violence, then to transmit a copy of the letter and of the affidavit to Mr. Adams, to the end that he may communicate the same to the British court, and urge their taking proper measures for bringing the offenders to punishment, and prevent the like excesses in future.

With respect to the illegality of the seizure and condemnation, it is to be observed, that the sentence of the court was not final; on the contrary the party aggrieved might have appealed. Until the proceedings of the court are seen, an adequate judgment cannot be formed either of their regularity or conformity to law and justice; nor can any nation become chargeable with failure of justice, while redress for the grievance complained of may be had by pursuing the course indicated and provided by their laws for the purpose.

Hence your secretary is of opinion, that with respect to the merits of the seizure and condemnation, Congress cannot, in the present stage of the business, interpose, but must leave the parties to pursue their remedy in the ordinary and well known course of judicial proceedings: Thereupon,

Resolved, That Congress agree to the said report.

OCTOBER 5, 1787.

The secretary of the United States for the department of foreign affairs, to whom was referred two letters from the honourable John Adams, of the 24th and 27th of January last, having reported as follows:

The first of these letters gives occasion to several questions. 1. Shall Mr. Adams return after the expiration of his commission to the court of London, viz. 24th February, 1788? Your secretary is persuaded that Mr. Adams really wishes and means to return next spring, and therefore thinks it would be proper for Congress to resolve, that the honourable John Adams, the minister plenipotentiary of the United States at the court of London, be permitted (agreeably to request) to return to America at any time after the 24th February, in the year of our Lord, 1788, and that his commission of minister plenipotentiary to their high mightinesses do also then determine.

And having also reported a resolution approving his conduct, and giving him the thanks of Congress, both resolutions were agreed to as follows:

Resolved, That the honourable John Adams, the minister plenipotentiary of the United States at the court of London, be permitted, agreeably to his request, to return to America at any time after the 24th day of February, in the year of our Lord, 1788, and that his commission of minister plenipotentiary to their high mightinesses do also then determine.

Resolved, That Congress entertain a high sense of the services which Mr. Adams has rendered to the

United States in the execution of the various important trusts which they have from time to time committed to him; and that the thanks of Congress be presented to him for the patriotism, perseverance, integrity and diligence with which he has ably and faithfully served his country.

The secretary having further reported—

The second question arising from this letter, is, Whether it will be expedient for the United States to appoint another minister to take the place of Mr. Adams at the court of London. On this head the secretary is of opinion that it will be expedient to appoint another, because there do exist differences between the United States and the court of London, which cannot too soon be adjusted, which must become the subject of occasional explanations and negotiations, and which on the part of the United States cannot be so well managed and conducted as by means of an intelligent and discreet minister on the spot. Your secretary's feelings strongly prompt him to retaliate the neglect of Britain in not sending a minister here; but as he conceives that such retaliation would eventually produce more inconveniences than advantages, he thinks it had better be omitted, especially as he is persuaded that this neglect will cease the moment that the American government and the administration of it shall be such as to impress other nations with a degree of respect which various circumstances deny to Congress the means of imposing at present. He thinks it should be the policy of the United States at present to keep all things as smooth and easy, and to expose themselves to as few embarrassments as possible, until their affairs

shall be in such a posture as to justify and support a more nervous style of conduct and language. Britain disputes the eastern boundary of the United States; she holds important posts and territories on the frontiers; and she complains that the treaty of peace has been violated by America. These affairs are important, and the management of them requires prudence and temper, especially considering how little the actual state of our national affairs tends to repress the influence either of unfriendly dispositions and passions, or of that kind of policy which the weakness of neighbours is very apt to suggest and promote. If Congress should concur in the opinion, that a minister to succeed Mr. Adams should be appointed, a resolution like the following would perhaps be the most proper.

Whereas divers important affairs still remain to be arranged and adjusted between his Britannick majesty and the United States, which on their part cannot be so well conducted as by means of a minister plenipotentiary at the court of London: Therefore,

Resolved, That a minister plenipotentiary to reside at that court be appointed, and that his commission take effect on the 25th day of February, 1788, and continue in force for the space of three years thereafter, unless sooner revoked.

Your secretary conceives it would be best that this minister should be appointed so early as that he might have time to reach London by the first of February, in order that he may have an opportunity of receiving information from Mr. Adams respecting characters and affairs; and that the progress of the business of the legation may not be stopped by the expiration of Mr. Adams's commission.

On the question,

Resolved, That this part of the report be postponed.

The secretary having proceeded in his report—

But if Congress should either not incline to appoint another minister, or should think proper to postpone it so long as that he will not probably be in London in February, then he thinks it would be right to consider another question arising from the letter, viz. Whether it would be expedient to constitute colonel Smith charge des affaires. On this head your secretary finds himself embarrassed. For on the one hand, he esteems colonel Smith as a gentleman of acknowledged merit, who has uniformly deserved well of his country; and on the other, the light in which the duties of his office have hitherto been viewed, gives the colour of propriety only to his reporting on the expediency of appointments, and not on the persons most proper to be appointed. And as the letter referred to him, and now under consideration, does nevertheless raise the question relative to the person as well as the place, he thinks it proper to make these remarks, lest if not adverted to, his omitting to report on the former as well as the latter might be ascribed to other than the true reasons. He thinks, that if when Mr. Adams quits the affairs of the legation, they are not to pass immediately into the hands of a successor, there can be little doubt of the expediency of appointing a proper person to take charge of them. In that case therefore it would, in his opinion, be proper to resolve, that a person be appointed to take charge of the affairs of the American legation at the court of London from the expiration of the commission of the present minister to the arrival

there of another minister to succeed him, or until the further order of Congress.

On this part of the report a question was taken to agree thereto, and was lost.

OCTOBER 8, 1787.

The secretary of the United States for the department of foreign affairs, to whom was referred a letter of the 28th day of August last, from the encargado de negocios of his catholick majesty, enclosing a Charleston paper, in which was published a letter to him, dated the 1st day of March last, signed John Sullivan, late captain fourth regiment American light dragoons, having reported,

That in his opinion the said John Sullivan has, by writing and publishing the letter in question, committed an offence against the peace and dignity of the United States, for which he ought to be punished. That the very imperfect provision as yet made for the judicial cognizance of such cases renders it difficult to point out the manner most proper for Congress to proceed in the present. The expediency of calling upon the executive of any state to apprehend and cause this man to be tried according to the course of the laws of the state is questionable, because unless done with a degree of vigour and spirit, the consideration of Congress would be still more diminished. That he (the secretary) has been informed that Mr. Sullivan is really a deserter from the late American army, and was concerned in very seditious practices at Philadelphia, about the time that Congress removed from thence.

Perhaps it might be well to direct the secretary at war to report the facts respecting the desertion, and his opinion what measures can and ought to be taken, in consequence of them. His report, together with the letter abovementioned, would probably render it expedient to order the secretary at war, to cause the said Sullivan to be arrested in the western country, and sent under guard to Philadelphia, where such of his offences as might be cognizable by the laws of that state would be properly tried; and where such further proceedings might be had against him, as facts and circumstances may render proper: Whereupon,

Resolved, That the encargado de negocios of his catholick majesty be informed, that Congress consider the conduct of John Sullivan, in writing and publishing the letter of which the said encargado de negocios complains, as being very reprehensible, and that they will cause such proceedings to be had against the writer as the laws of the land prescribe. And further, that Congress will on this and every other occasion interpose their authority to frustrate and punish all such designs and measures as may be calculated to interrupt and disturb the peace and good understanding which happily subsist between his catholick majesty and the United States.

Ordered, That the secretary at war report the facts respecting the desertion of John Sullivan, and his opinion what measures can and ought to be taken in consequence of them.

OCTOBER 12, 1787.

On a report of the board of treasury, in consequence of an act of 18th July,

Resolved, That the balance of the appropriation for the Barbary treaties, of the 14th February, 1785, not hitherto applied to that object, be and it is hereby constituted a fund for redeeming the American captives now at Algiers; and that the same be for this purpose subject to the direction of the minister of the United States at the court of Versailles.

That the acts of Congress of the 14th February, 1785, and such part of the resolves of the 18th July, 1787, as directs provision to be made for the above object be and they are hereby repealed.

On motion of Mr. King, seconded by Mr. H. Lee,

Resolved, That Congress proceed to the election of a minister plenipotentiary to reside at the court of France; and that his commission commence from the expiration of the present commission of the honourable Thomas Jefferson, and continue in force for the term of three years, unless sooner revoked by Congress.

Congress accordingly proceeded to the election, and the ballots being taken,

The honourable Thomas Jefferson was elected.

OCTOBER 13, 1787.

On a report of the secretary at war, to whom was referred an extract of a report of the secretary for foreign affairs on the case of John Sullivan—

Whereas a certain John Sullivan, styling himself "late captain fourth regiment American dragoons," has written an inflammatory and unwarrantable letter to the encargado de negocios of his catholick majesty, bearing date the first day of March, 1787, tending to interrupt and injure the peace and mutual confidence which so happily subsists between the United States and his said catholick majesty: Therefore,

Resolved, That the secretary at war direct the commanding officer of the troops of the United States on the Ohio, that if the said John Sullivan come within the federal territory, he cause the said J. Sullivan to be seized and confined, in order that he may be legally tried and punished according to the nature and degree of his crime.

A motion being made by Mr. Butler, seconded by Mr. Kean, that it be resolved, that Congress entertain the highest sense of the friendly disposition of his catholick majesty towards the United States; and that it is their ardent desire and fixed intention to preserve uninterrupted that good understanding at present subsisting between the United States and his catholick majesty; and that Congress should have given evidence of their friendship for his catholick majesty and his subjects, by entering on an adjustment of every unsettled matter subsisting between them, were they not prevented for the present by pressing domestick concerns which engross the whole of their attention at this time—

On the question to agree to this, the yeas and nays being required by Mr. Butler—

New Hampshire,	Mr. Gilman,	Ay.	×Ay.
Massachusetts,	Mr. King,	Ay.	Ay.
	Mr. Dane,	Ay.	
Connecticut,	Mr. Cook,	Ay.	×Ay.
New York,	Mr. Haring,	No.	Divided.
	Mr. Smith,	Ay.	
New Jersey,	Mr. Cadwallader,	No.	No.
	Mr. Clarke,	No.	
Pennsylvania,	Mr. St. Clair,	Ay.	Divided.
	Mr. Irwine,	No.	
Delaware,	Mr. Kearny,	No.	No.
	Mr. Mitchell,	No.	
Maryland,	Mr. Ross,	Ay.	×Ay.
Virginia,	Mr. Grayson,	No.	Divided.
	Mr. Madison,	No.	
	Mr. H. Lee,	Ay.	
	Mr. R. H. Lee,	Ay.	
North Carolina,	Mr. Ashe,	No.	Divided.
	Mr. Burton,	Ay.	
South Carolina,	Mr. Kean,	Ay.	Ay.
	Mr. Butler,	Ay.	
Georgia,	Mr. Few,	No.	×No.

So the question was lost.

The secretary of the United States for the department of foreign affairs, to whom was referred a letter to him from the minister of the United Netherlands, of the 20th of February last, enclosing a note of the same date, complaining of an act of the legislature of

the commonwealth of Virginia exempting French brandies imported in French and American vessels from certain duties, to which the like commodities imported in Dutch vessels are left liable, as being contrary to the second article in their treaty with the United States, stipulating that they shall be treated as the most favoured nation, having reported,

That although he has no official knowledge of the said act, yet from the account given of it in the said note, and from other information, he believes that such an act exists.

The second and third articles in the treaty with France respect this subject. The second is in these words: "The most christian king and the United "States engage mutually not to grant any particular "favour to other nations in respect of commerce and "navigation, which shall not immediately become com-"mon to the other party, who shall enjoy the same "favour freely, if the concession was freely made, or on "allowing the same compensation, if the concession "was conditional."

The second article in the treaty with the United Netherlands on the same subject is in these words, viz. "The subjects of the said states general of the Unit-"ed Netherlands shall pay in the ports, havens, roads, "countries, islands, cities or places of the United "States of America, or any of them, no other nor "greater duties or imposts, of whatever nature or de-"nomination they may be, than those which the nations "the most favoured are or shall be obliged to pay; "and they shall enjoy all the rights, liberties, privi-"leges, immunities and exemptions in trade, naviga-

"tion and commerce, which the said nations do or "shall enjoy, whether in passing from one port to ano- "ther in the said states, or in going from any of those "ports to any foreign port of the world, or from any "foreign port of the world to any of those ports."

It is observable that this article takes no notice of cases where compensation is granted for privileges. Reason and equity, however, in the opinion of your secretary, will supply this deficiency, and give to both articles exactly the same construction and operation in those cases. Where a privilege is gratuitously granted, the nation to whom it is granted becomes in respect to that privilege a favoured nation, and from that circumstance both the articles in question deduce claims to the like favour; but where the privilege is not gratuitous, but rests on compact, in such case the favour, if any there be, does not consist in the privilege yielded, but in the consent to make the contract by which it is yielded: for bargains may, from their objects and circumstances, be sometimes so made as that the consent to make them may be deemed a favour. The favour, therefore, of being admitted to make a similar bargain, is all that in such cases can reasonably be demanded under the article. Besides, it would certainly be inconsistent with the most obvious principles of justice and fair construction, that because France purchases, at a great price, a privilege of the United States, that therefore the Dutch shall immediately insist, not on having the like privileges at the like price, but without any price at all.

Supposing that this reasoning is just, and that the article ought to be so construed, then the first question

that presents itself in the present case is, Whether the grant by Virginia to France of the privilege in question is gratuitous or not.

From the tenor of the act it does appear to your secretary to be gratuitous, and not to partake in the least of the nature of compact.

If this be the true construction of the act, then, in the opinion of your secretary, France did thereupon become, in respect to the privilege granted, a favoured nation; and the Dutch, having a right to be treated as the most favoured nation, have a just claim to be favoured in like manner.

But they are not favoured in like manner, and they complain of it; and hence arises another question, viz. What is to be done?

According to the present state of our national government, the act of Virginia will doubtless continue to exist; and the Dutch will continue to pay more duties than the French on brandies imported there, until the act is repealed.

However well disposed Virginia may be, and doubtless is, to correct every mistake, yet some time must elapse before the next session of their legislature; and therefore the repeal of the act cannot take place immediately.

Your secretary thinks the two following resolves would be proper, viz.

Resolved, That whenever any of these states shall think proper to grant a favour to any foreign nation, such state ought to extend it to such other foreign nations as, by treaties with the United States, are to be treated as the most favoured nations.

Resolved, That a copy of the above resolution, and of the representation of the minister of the United Netherlands, be transmitted to the commonwealth of Virginia, to the end that the legislature of that commonwealth may take the earliest opportunity of revising the act of which the said minister complains, and rendering the same perfectly consistent with the treaty subsisting between the United States and the United Netherlands, and of causing to be repaid whatever extra duties may, in virtue of the said act, be exacted on the brandies there imported in Dutch vessels during the operation of the same.

As the United States have at present no minister or representative at the Hague, through whom it would be most proper to convey whatever Congress might think proper to communicate to their high mightinesses on the occasion, your secretary thinks it would be well to quiet the minds of the states general on this subject, by directing that copies of the aforegoing resolutions be given to their minister; and that he be requested to assure their high mightinesses that Congress are well persuaded that the omission of Virginia in not extending to them the favour granted to France, was entirely inadvertent, and not designed; and they flatter themselves, that the said resolutions, and the respect with which they will be treated by Virginia, will fully manifest to their high mightinesses the good faith and friendship of the United States in general, and of Virginia in particular.

Your secretary thinks he ought not to close this report without adding a few remarks which the conside-

ration of this subject suggests, and which make a strong impression on his mind.

If individual states go into the practice of granting favours to foreign nations, of what nature will those favours be, and what tendency will such a practice have?

By the sixth article of the confederation, no particular state can send or receive ambassadors, enter into negotiations, contract engagements, form alliances, nor conclude treaties with any kings, princes or states whatsoever, without the consent of the United States assembled in Congress.

This article appears to have been calculated to preserve uniformity not only in our political but also in our commercial systems.

If no individual state can contract with a foreign power, it follows that the states individually can grant no privileges otherwise than gratuitously. But would not such a practice naturally tend to introduce a commerce of favours and of privileges; and encourage private intrigues and influence to promote and direct it? Would not the uniformity and equality of our commercial system be thereby insensibly deranged? Would not the balance of foreign privileges in time become in favour of some states and against others? And would not the latter be often constrained to grant favours as inducements to obtain others? Thus by degrees there would be favoured and favourite states; thus by degrees the federal head would become less and less important; and the bands of the union become more and more loose and ineffectual.

Your secretary in making these remarks has no particular state in his eye ; he means them as general remarks, and hopes they will be so received and understood.

Whereupon Congress came to the following resolutions :

Resolved, That whenever any of these states shall think proper to grant a favour to any foreign nation, such state ought to extend it to such other foreign nations as by treaties with the United States are to be treated as the most favoured nation.

Resolved, That a copy of the above resolution and of the representation of the minister of the United Netherlands be transmitted to the commonwealth of Virginia, to the end that the legislature of that commonwealth may take the earliest opportunity of revising the act of which the said minister complains, and rendering the same perfectly consistent with the treaty subsisting between the United States and the United Netherlands, and of causing to be repaid whatever extra duties may, in virtue of the said act, be exacted on the brandies there imported in Dutch vessels, during the operation of the same.

OCTOBER 16, 1787.

Resolved unanimously, That a medal of gold be struck and presented to the chevalier John Paul Jones, in commemoration of the valour and brilliant services of that officer in the command of a squadron of French and American ships, under the flag and commission of the United States, off the coast of Great Britain in the

late war; and that the honourable Mr. Jefferson, minister plenipotentiary of the United States at the court of Versailles, have the same executed with the proper devices.

Resolved, That a letter be written to his most christian majesty informing him, that the United States in Congress assembled have bestowed upon the chevalier John Paul Jones this medal, as well in consideration of the distinguished marks of approbation which his majesty has been pleased to confer upon that officer, as from a sense of his merit. And that as it is his earnest desire to acquire greater knowledge in his profession, it would be acceptable to Congress that his majesty would be pleased to permit him to embark with his fleets of evolution, convinced that he can no where else so well acquire that knowledge which may hereafter render him more extensively useful.

Ordered, That the secretary for foreign affairs prepare a letter for the above purpose, to be signed by the President; and that the chevalier J. P. Jones be the bearer of the said letter.

Draft of a commission and letter of credence for Mr. Jefferson, made out for him in consequence of the act of Congress of the 12th October, re-appointing him minister plenipotentiary at the court of France.

Commission.

The United States of America in Congress assembled—To our trusty and well beloved Thomas Jefferson, esquire, send greeting.

We, reposing especial trust and confidence in your integrity, prudence and ability, have nominated, con-

stituted and appointed, and by these presents do nominate, constitute and appoint you, the said Thomas Jefferson, our minister plenipotentiary to reside at the court of his most christian majesty; and do give you full power and authority there to represent us, and to do and perform all such matters and things as to the said place or office doth appertain, or as may by our instructions be given unto you in charge. This commission to commence and take effect from and after the tenth day of March next, and continue in force for the space of three years thence ensuing, unless sooner revoked.

In testimony whereof we have caused the seal of the United States to be hereunto affixed. Witness his excellency Arthur St. Clair, our President, this twelfth day of October, one thousand seven hundred and eighty seven, and of our sovereignty and independence, the twelfth.

The letter of credence.

GREAT AND BELOVED FRIEND,

We, the United States in Congress assembled, have given to Thomas Jefferson, esquire, a new commission to represent us at your majesty's court, which is to commence at the expiration of his present one; and we beseech your majesty to give entire credit to whatever he shall deliver on our part, especially when he shall assure you of the sincerity of our friendship. We pray God to keep your majesty under his holy protection.

Done at the city of New York, the 12th day of October, in the year of our Lord, 1787, and of our sovereignty and independence, the 12th.

The secretary for foreign affairs reports, That agreeably to the order of the 16th he hath prepared the following letter to his most christian majesty, which, having been duly signed and countersigned, was delivered to the chevalier J. P. Jones.

GREAT AND BELOVED FRIEND,

We, the United States in Congress assembled, in consideration of the distinguished marks of approbation with which your majesty has been pleased to honour the chevalier J. Paul Jones, as well as from a sense of his merit, have unanimously directed a medal of gold to be struck and presented to him, in commemoration of his valour and brilliant services while commanding a squadron of French and American ships, under our flag and commission, off the coast of Great Britain, in the late war.

As it is his earnest desire to acquire greater knowledge in his profession, we cannot forbear requesting the favour of your majesty to permit him to embark with your fleets of evolution, where only it will be probably in his power to acquire that degree of knowledge which may hereafter render him more extensively useful.

Permit us to repeat to your majesty our sincere assurances, that the various and important benefits for which we are indebted to your friendship will never cease to interest us in whatever may concern the happiness of your majesty, your family and people.

We pray God to keep you, our great and beloved friend, under his holy protection.

Done at the city of New York, the 16th day of October, in the year of our Lord, 1787, and of our sovereignty and independence, the 12th.

OCTOBER 25, 1787.

On motion of Mr. H. Lee, seconded by Mr. Carrington,

Resolved, That the minister of the United States at the court of Versailles be and he hereby is authorized and instructed, to represent to his Danish majesty, that the United States continue to be very sensibly affected by the circumstance of his majesty having caused a number of their prizes to be delivered to Great Britain during the late war, and the more so as no part of their conduct had forfeited their claim to those rights of hospitality which civilized nations extend to each other. That not only a sense of the justice due to the individuals interested in those prizes, but also an earnest desire that no subject of discontent may check the cultivation and progress of that friendship which they wish may subsist and increase between the two countries, prompt the United States to remind his majesty of the transaction in question; and they flatter themselves that his majesty will concur with them in thinking, that, as restitution of the prizes is not practicable, it is reasonable and just that he should render, and that they should accept, a compensation equivalent to the value of them.

That the said minister be further authorized and instructed finally to settle and conclude the demand of the United States against his Danish majesty, on account of the prizes aforesaid, by such composition and on such terms as may be the best in his power to obtain; and that he be directed to retain in his hands all the money so recovered till the further order of Congress.

That the said minister be and he is hereby authorized, in case he shall think it proper, to despatch the chevalier J. P. Jones, or any other agent, to the court of Denmark, with such powers and instructions relative to the abovementioned negotiation as in his judgment may be most conducive to the successful issue thereof; provided, that the ultimate conclusion of the business be not made by the agent without the previous approbation of the said minister.

That the person employed shall, for his agency in the business aforesaid, be allowed five per cent. for all expenses and demands whatever on that account.

Ordered, That the board of treasury transmit to the minister of the United States at the court of Versailles all the necessary documents relative to the prizes delivered up by Denmark.

FEBRUARY 12, 1788.

The secretary for foreign affairs having reported drafts of letters as being in his opinion proper to recall the honourable J. Adams from the courts of London and the Hague, the same were agreed to as follows:

GREAT AND GOOD FRIEND,

As the time we had limited for the duration of Mr. Adams's residence in quality of our minister plenipotentiary near your majesty will shortly expire, we have directed him then to take leave of your majesty, and to assure you of our friendship and sincere desire to promote the most perfect harmony and confidence between the two nations. Our opinion of Mr. Adams persuades us that he will do this in the manner most expressive of these sentiments, and of the respect and sincerity with which they are offered. We pray God to keep your majesty under his holy protection.

Written at the city of New York, the day of By your majesty's good friends, the United States in Congress assembled.

GREAT AND BELOVED FRIENDS,

Mr. Adams, our minister plenipotentiary at your court, having signified to us his earnest desire to return to his native country, we have thought proper to grant his request, and directed him to take leave of your high mightinesses in writing. The zeal, fidelity and abilities which he hath constantly exhibited in our service, persuade us that he will agreeably to our directions assure you in the most explicit and proper manner of our affection for your respectable republick, and our sincere desire that the friendship which happily subsists between us may be rendered more and more intimate and permanent by mutual good offices,

and an intercourse agreeable and beneficial to both countries.

We pray God to keep your high mightinesses under his holy protection.

Written at the city of New York, the day of By your good friends, the United States of America in Congress assembled.

MARCH 18, 1788.

The secretary for foreign affairs, to whom was referred a letter of the day of 1787, from the chevalier de la Luzerne to his excellency the President of Congress, having reported, that in his opinion it would be proper that he should write to the chevalier a letter of the following tenor:

SIR,

His excellency the President laid before Congress your letter of recall, together with the one that enclosed it: and I have the honour, in obedience to their orders, to assure you, that had you resumed your former place near them, you would have received fresh and continued marks of that esteem with which the manner in which you fulfilled the duties of it very early impressed them. They have heard with pleasure of the recent and honourable proof which the king has given you of his confidence; and as your attachment and services to this country will always be remembered, so you will always have the best wishes of Congress, that success and prosperity may attend you to every station

to which your distinguished merit and talents may induce the king to call you,

Resolved, That Congress agree to said report, and that it be referred to the secretary for foreign affairs to take order.

JUNE 2, 1788.

On a report of the secretary to the United States for the department of foreign affairs, to whom were referred two letters from his most christian majesty, dated the 30th September, 1787,

Resolved, That the following answers be returned:

GREAT AND BELOVED FRIEND AND ALLY,

The conduct of your majesty's minister, the chevalier de la Luzerne, during his residence with us was commendable and satisfactory, and it gives us pleasure to assure you, that we entertain a high opinion of his merit. The manner in which, by your majesty's order, he has taken leave of us, manifests his attention to your dignity and interests, and affords strong evidence of his attachment to the prosperity and happiness of these states.

We pray God to have you, our great and beloved friend, in his holy keeping.

Written at New York, the second day of June, 1788,

By your good friends, the United States of America in Congress assembled.

The translation of the letter to which the above is an answer, is as follows:

VERY DEAR GREAT FRIENDS AND ALLIES,

The chevalier de la Luzerne, having terminated the time which we had fixed for his residence with you in quality of our minister plenipotentiary, we have ordered him to take leave of you by writing. The prudent and enlightened conduct, which he constantly observed during the course of his mission, add to the proofs which he had before given us of his zeal for our service. We are persuaded he will equally to our entire satisfaction acquit himself of the order which we have given him to assure you, in terms the most expressive, of our affection and of our sincere friendship for you. He cannot too strongly paint to you the lively interest which we take in the prosperity of the United States in general, and in that of each of them in particular. On this we pray God that he will have you, very dear great friends and allies, in his holy keeping. Done, &c.

GREAT AND BELOVED FRIEND AND ALLY,

The choice you have been pleased to make of the count de Moustier to succeed the chevalier de la Luzerne is perfectly agreeable to us. We flatter ourselves that he will, with equal zeal and ability with his predecessor, endeavour to promote and reconcile the essential interests of both countries, and study to preserve and increase the mutual attachment and intercourse which happily subsists between them.

We receive with great pleasure the kind and explicit assurances of friendship contained in both of your

majesty's letters of the 30th of September last; a long series of important good offices have afforded us ample proof of it; and we cannot omit this occasion of conveying to you our sincere acknowledgments for the recent marks exhibited in the commercial favours you have lately been pleased to confer on the United States.

We pray God to have you, our great and beloved friend and ally, in his holy keeping.

Written at New York, the second day of June, 1788.

By your good friends, the United States of America, in Congress assembled.

The translation of the letter to which the above is an answer is as follows:

VERY DEAR GREAT FRIENDS AND ALLIES,

Particular reasons relative to the good of our service have determined us to appoint a successor to the chevalier de la Luzerne, our minister plenipotentiary with you. We have chosen the count de Moustier to take his place in the same quality. The marks of zeal which he has hitherto given us persuade us, that on this new occasion he will conduct himself in such a manner as to render himself agreeable to you, and more and more worthy of our good will. We pray you to give full faith to whatever he may say to you on our part, particularly when he shall assure you of the sincerity of our wishes for your prosperity, as well as of the constant affection and friendship which we bear to

the United States in general, and to each of them in particular.

We pray God that he will have you, very dear great friends and allies, in his holy keeping.

Written at Versailles, the 30th September, 1787.

Your good friend and ally.

(Signed) LOUIS.

COUNT DE MONTMORIN.

JUNE 13, 1788.

The committee, consisting of Mr. Hamilton, Mr. Dane, Mr. Dayton, Mr. Otis and Mr. Carrington, to whom was referred a report of the secretary for foreign affairs on a note from the minister plenipotentiary of France, of the 28th May, report,

That it appears by the said note and the papers which accompany it, that the person mentioned therein, to wit, Joseph Marie Anne Ferrier, commander of the brig David, is in substance charged with betraying his trust, and running away with a cargo of coffee; that the execution of this design is alleged to have been begun at the Cape, continued by certain acts on the high seas, and completed in the commonwealth of Virginia: Whereupon,

Resolved, That the secretary for foreign affairs be and he is hereby directed, to transmit the said note of the minister plenipotentiary of France, of the 28th May last, to the executive of the commonwealth of Virginia, to the end that the said executive may communicate to Congress the necessary information on the

subject; and also to signify to the said executive, that it is the sense of Congress that the said Joseph Marie Anne Ferrier ought to be apprehended in order to be dealt with according to the nature of the case. And that the said secretary be and he is hereby directed, to inform the said minister plenipotentiary that instructions have already been given to the minister of the United States at the court of France concerning the consular convention referred to in his note.

The translation of the note from the minister of France is as follows:

New York, May 28, 1788.

The undersigned minister plenipotentiary of France has the honour of informing the United States in Congress assembled, that he has received an order from his court to demand the delivery of a French captain who has been guilty of a crime, the punishment of which is equally interesting to every commercial nation. Joseph Marie Anne Ferrier, a native of Cette, in Languedoc, commanding the brig David, was despatched from the Cape, in the island of St. Domingo, for Nantz, the 1st July, 1787, with a cargo of one hundred thousand pounds weight of coffee, belonging to different persons. Under pretence of some leaks which were discovered in his vessel, he directed his course for Norfolk, in Virginia, where he arrived the 26th of the same month. The sieur Oster, the king's vice consul, having gone on board to visit the vessel and appoint inspectors, in order to prove her condition in conformity with his majesty's ordinances, found

from the depositions of some passengers, that the said Ferrier had not intended to go to France, as he had only taken in provisions for fifteen days; that the evening before he left the Cape he clandestinely sold a large part of his cargo; that in order for a pretext to stop at Virginia, and there sell his vessel, he had several leaks made on purpose in the hold, by which means twelve thousand pounds coffee was damaged, which the sieur Oster was obliged to order to be sold at auction; that he had wickedly thrown overboard an anchor of seven hundred and fifty pounds, a large cable of one hundred and twenty fathoms, some top masts, and other things belonging to his brig. In short, to conceal his misdemeanours, he kept at sea a false journal, which he signed himself, and caused his mate and crew to do the same, in order to make it appear that he had been obliged to renounce his voyage to Nantz, and stop at the Chesapeake. Captain Ferrier being informed of these depositions, and fearing the consequences of his crime, deserted with his mate and other accomplices; but he was taken by the inhabitants, and brought back to the sieur Oster, who sent him prisoner on board the French ship the Jason, after permission obtained from the mayor of Norfolk. The culprit underwent an interrogatory on the 6th December, and confessed the crime of which he was accused. The process being finished, the sieur Oster called an assembly of the merchants belonging to his nation, in which it was resolved that Ferrier should be sent to Nantz, to be judged by the officers of the admiralty. He wrote at the same time to the governour of Virginia, giving him an account of all these particulars, and requesting the consent of the council

to send the said Ferrier to France, in the vessel which he had commanded. He received no answer to this letter, which was dated the 2d October, copy of which, (No. 1.) is annexed. But on the 7th of November a sheriff went on board the French ship with a writ to arrest the said Ferrier as a debtor for fifty pounds to a *Frenchman*, resident in Norfolk. The criminal was accordingly liberated, after giving bail to appear at the first county court. The sieur Oster wrote a second time to the governour, complaining of this irregular procedure, and reclaiming not only the captain, but the other criminals. He received no other answer but the one annexed, (No. 2, 3.) After these particulars, the undersigned has the honour to represent, that it is very surprising that notwithstanding the official information which had been given the 2d October, concerning the crimes of which captain Ferrier had been convicted, he should be liberated the 7th November, under a pretence of a civil action of fifty pounds. That, condemned in irons on board a French vessel by the consul of his nation, and with the consent of the mayor of Norfolk, he was taken away on a suit brought by a *Frenchman*, who ought to have acknowledged the jurisdiction and authority of his consul, but who very likely was in concert with the criminal to effect his escape. In short, that the magistrates have facilitated this escape without any regard to the complaints which were made by his majesty's vice consul, a conduct the more extraordinary, as by a law of 1779 the state of Virginia authorizes the consuls of powers which have acknowledged the independence of the United States to claim the deserters from the vessels of their nation;

to judge differences between their subjects agreeable to the laws of their country; and to execute their sentences, provided they do not pronounce corporal punishment. It was in consequence of this law that the sieur Oster obtained full and entire satisfaction in August, 1784, in a case similar to the one in question. But even were this vice consul unsupported by any particular law, he might found his claim on the common rights of nations; on the mutual ties between allied powers; on the treaty of commerce and the consular convention, which was a consequence of it; on the procedure which took place in a similar case, in 1784; on the reciprocity invariably established in France; on the interests of every commercial nation, that a crime of this nature should not remain unpunished; in short, on the dignity of Virginia, which would be particularly exposed, if one could suspect that state of encouraging and protecting villains proscribed by the law of every polished nation. In consequence of these observations the undersigned minister has received orders to claim the criminal; and if by a connivance which is not very likely, and which would be very wide of the principles of justice and moderation which Virginia has so often displayed, captain Ferrier has found means of escaping, he demands to be informed of the motives that determined the magistrates to pay no respect to the well founded and pressing claims of the vice consul of France, and to elude not only the law which was passed in 1779, but the principles which form the basis of every consular establishment, which are formally adopted by the convention between his majesty and the United States, signed

by the respective plenipotentiaries, and which have been hitherto religiously observed in the kingdom, with respect to the citizens of the United States. The undersigned minister has the honour of reminding on this occasion the United States in Congress assembled, agreeable to an express order received from his court, of the necessity of concluding as speedily as possible the last formalities which may have been neglected, in order to give every suitable effect to the aforesaid convention, and to represent to them the propriety of giving definitive instructions on this head to their minister plenipotentiary with his majesty. The interest which the king has always taken in the prosperity of the commerce between the kingdom and the United States is manifested on every occasion too evidently for his majesty not to expect on their part every necessary step to secure a perfect reciprocity, the only solid basis on which the advantages granted by his majesty to the commerce of the United States can exist.

(Signed) THE COUNT DE MOUSTIER.

Office for Foreign Affairs, May 26, 1788.

The secretary of the United States for the department of foreign affairs, to whom was referred his letter of 20th March last, together with the letters and papers from sir John Temple,* that were enclosed with it, reports,

* The letter from sir John Temple and papers referred.

New York, November 10, 1787.

SIR,

The enclosed petition, with the documents annexed to it, from Richard Lawrence, an American loyalist, to the king my sovereign, I had the honour to receive by the last packet from England, together with his

That the letter and papers in question relate to the case of Richard Lawrence, a ship-carpenter in the British service in the late war.

majesty's commands, signified to me by one of his principal secretaries of state, that I should make inquiry into the circumstances of said petitioner's case; and if I should find him justly entitled to the benefit he claims, under the stipulation of the sixth article of the definitive treaty between his majesty and the United States of America, I should make the strongest representations to Congress for his being immediately set at liberty, and full restitution made to him of such property as he may have been unjustly deprived of, together with such further satisfaction as the nature of his case may justify me in soliciting. To which purpose, sir, will you permit me to request, that the said petition, together with his majesty's commands so signified to me, may be laid before Congress as soon as may be after that honourable body shall re-assemble to do business? In the mean time I am so confident of your humanity as well as of your justice, that I have not even the least doubt you will do all that may be in your power, during the present recess of Congress, to mitigate the distresses of the said petitioner now or late a prisoner in the gaol of this city.

I have the honour to be, with very great regard and esteem, sir, yours, &c. &c.

J. TEMPLE.

The honourable John Jay, Esquire, Principal Secretary for Foreign Affairs, United States of America.

To the King's most excellent Majesty.

The humble petition of Richard Lawrence, a loyalist, and late a master ship carpenter in the British service, but now a prisoner in the new gaol of the city of New York, in North America, showeth—

That previous to the commencement of the unhappy contest betwixt Great Britain and America, your petitioner resided at Staten Island, in the then colony of New York, following his trade of a ship carpenter, and being zealously attached to your majesty's government. After the rebellion began, his loyalty remained unshaken; and as soon as the British troops landed upon Staten Island, he repaired to the royal standard.

Among the papers a copy of his petition to his Britanick majesty, stating that he was an inhabitant of Staten Island, and joined the king's troops on their landing there.

That your petitioner was afterwards appointed by sir William Howe, commander in chief of your majesty's forces, master carpenter of the ship yards at Staten Island and New York, and continued in that employment until the year one thousand seven hundred and eighty. And receiving an order from the said commander in chief, a true copy whereof is hereunto annexed, your petitioner, in obedience to such order, did seize and take under his charge, several boats and vessels, and also large quantities of ship timber and other naval stores, &c. belonging to the rebels; and having received an appointment from his excellency William Tryon, esquire, then governour of New York, a copy whereof is also annexed, your petitioner did take upon himself the direction and management of the woods in the said appointment mentioned; and by like orders from the commander in chief, did take upon himself the direction and management of divers other woods upon estates in Staten Island aforesaid, and large quantities of timber were, under the inspection of your petitioner, cut down from the said woods, and used in your majesty's service; but your petitioner never made any advantage or profit thereof, or converted any part to his own use or emolument, but the said timber was entirely applied to the publick service:

That upon the evacuation of New York, your petitioner intended to have withdrawn into some part of your majesty's dominions; but having several considerable sums of money due to him, and relying upon the sixth article of the definitive treaty, which declares, "That there "shall be no future confiscations made, nor prosecutions commenced, "against any person or persons for or by reason of the part which he "or they may have taken in the present war; and that no person "shall on that account suffer any future loss or damage, either in his "person, liberty or property," your petitioner remained in New York after the evacuation thereof to manage and settle his affairs; but before he could effect the same, in manifest violation of that treaty and of national faith, several actions at law were commenced against him by the proprietors of the said estates at Morrisania and Staten Island,

That he was employed by the British commander in chief; and in pursuance of orders did seize and take several boats and vessels, and ship-timber and naval

for the damages they sustained by their timber being cut down and used in your majesty's service, and by the owners of the boats and vessels, ship timber and other stores, which your petitioner seized, by virtue of the annexed order. And although he pleaded the said treaty in bar of such actions, yet judgment was given against him, and he was arrested, and has been for upwards of sixteen months closely confined in the common gaol of New York; which has not only reduced him to poverty, but (being far advanced in years) hath also nearly put a period to his miserable existence, his health being greatly impaired, and having almost lost his sight by his long imprisonment, and his unfortunate wife and family reduced from competency to a state of indigence and distress.

That in hopes of relief, your petitioner has laid his unfortunate case before the Congress of the United States of America, and the governour and assembly of the state of New York; but no attention has been given by any of them to his petitions. He therefore with the greatest humility ventures to lay his unfortunate situation before your majesty, encouraged by the professed inclination your majesty has shown to alleviate the misfortunes of those persons who since the late war suffered for their loyalty and attachment to your majesty's person and government; and as your petitioner, from the aggravated wretchedness which the loss of his liberty and ruin of his fortune has entailed upon him, is totally unable to satisfy the large damages recovered against him in the said actions, he must without some powerful interposition end his days in misery and wretchedness, confined to a loathsome prison, destitute of the common necessaries of life, deprived of the free use of the air, and cut off from all possibility of maintaining his unfortunate family, who are now reduced to beggary and despair.

Your petitioner therefore most humbly hopes that your majesty in your great goodness will be pleased to take his unfortunate case into consideration; and by your royal interposition with the Congress of the said United States of America, prevent his suffering the most dreadful, the most horrid of all human punishments, perpetual imprisonment.

RICHARD LAWRENCE

stores, and cause large quantities of timber to be cut and used in the said king's service.

That after the peace, actions at law were commenced against him in this state by the proprietors of the timber and other articles abovementioned; that he pleaded the treaty in bar of the said actions, but that judgment was nevertheless given against him, and that he was confined in gaol, &c.; that he had petitioned Congress, and the governour and assembly of the state

COPY.

Head-quarters, New York, December 3, 1776.

It is the commander in chief's orders that Mr. Richard Lawrence takes under his charge all the boats and vessels belonging to the rebels, laid up in the several creeks near Elizabeth Town; as also all ship-timber, oars, tar, and all other naval stores, &c. &c. &c.

WILLIAM SHERIFF, D. Q. M. G.

To all whom it may concern.

COPY.

I do hereby appoint Richard Lawrence, master carpenter in the quartermaster general's department, to superintend the woods on the widow Morris's estate at Morrisania; and to have the sole direction and management thereof. And all persons cutting timber from off the said estate for the express use of his majesty's service in any of the publick departments of the army or navy, are required to apply to the said Richard Lawrence, who will show them the proper places to furnish what may be required.

Given under my hand and seal at arms, at King's Bridge Forepost, the 3d day of May, 1779. WM. TRYON, Governour.

By his excellency's command,

B. J. JOHNSON, P. T.

I do hereby certify the above to be true copies of the original appointment and orders, as produced to me this 7th of June, 1787.

J. TEMPLE.

of New York; but that no attention had been given to his petitions.

Sir John's letter states, that he had received his majesty's commands to inquire into Mr. Lawrence's case; and if he should find him entitled to the benefit he claims under the sixth article of the treaty of peace, to make the strongest representations to Congress for his being immediately set at liberty, and full restitution made him, &c. "To which purpose" sir John (in his letter) requested "that the said petition, together with "his majesty's commands so signified to him, might "be laid before Congress as soon as might be after "that honourable body should re-assemble to do busi-"ness."

Your secretary has taken much pains to acquire an accurate state of the facts relative to this business. He has conversed on this subject with Mr. Lawrence and others, and procured certified copies of the records of the causes alluded to, which copies are hereunto annexed.

One of these records is of the proceedings in an action of trover brought against him by Jonathan Morrel. Mr. Lawrence plead, "*that he was not guilty* "*of the premises above laid to his charge.*" The jury who tried the issue found that he was guilty, and assessed the damages of the plaintiff at two hundred and thirty pounds; and the court gave judgment accordingly.

Another of these records is of the proceedings in an action of trespass brought and prosecuted against him by Samuel Broome. Mr. Lawrence plead, "*that he* "*was not guilty thereof.*"

The jury who tried the issue found that he was guilty, and assessed the plaintiff's damages at four hundred and twenty-five pounds; and the court gave judgment accordingly.

The third record is of the proceedings in an action of trespass commenced and prosecuted against him by John Broome. Mr. Lawrence plead, "*that he was not guilty thereof.*" The jury who tried the issue found that he was guilty, and assessed the plaintiff's damages at two hundred and eighty pounds; and the court gave judgment accordingly.

The word treaty is not to be found in either of these three records; so that Mr. Lawrence's assertions on that head are not well founded.

Your secretary is however informed and believes, that in the course of the trials, the treaty was urged to the jury as affording just cause for their deciding in favour of the defendant; and that the court charged the jury on that subject with great fairness and impartiality; but whether the juries did not conceive that the treaty applied to those particular causes, or from whatever cause is not certain, but the fact is, that they found the verdicts in favour of the plaintiffs in the manner before mentioned.

Your secretary has been informed and is assured, that there has not as yet been a single adjudication in any of the courts of this state against any article of the treaty. Wherever the treaty has been specially pleaded, and the point thereby brought fairly before the judges for decision, there is not an instance of a determination against it; but on the other hand, there is reason to suspect that some causes in which the de-

fendants have been so unwary as to permit them to go to juries on the general issue, proper respect has not in every instance been paid to the treaty.

There is another point which seems to deserve attention, and that is, how far remonstrances of this kind can be made with propriety to Congress on behalf of any sovereign, by a person not charged by that sovereign with such affairs, in the manner accustomed among nations.

Sovereigns should be on equal terms in all their transactions one with another; but that would not be the case if one was always bound, and the other always loose.

As sir John has no commission nor letter of credence which would render his king responsible for any thing which sir John may (in virtue of *private* instructions) say or do in his name, prudence requires that with respect to all affairs beyond his consular department, he be considered as a private gentleman.

Your secretary thinks it advisable that the court of London should perceive clearly that Congress will not negotiate in this unsafe and improper way; and also that the complaints in question against the justice of this country are ill founded.

For both these reasons it would in his opinion be well to permit him to write the following letter to his Britannick majesty's minister for foreign affairs, viz.

MY LORD,

As there is no person here properly charged with the affairs of his Britannick majesty, nor at London with those of the United States, no communications

can be made in that channel. Occasions however will occur on which some correspondence may be expedient, especially as mutual silence might otherwise permit mistakes to prevail, which friendly explanations could easily correct.

Your lordship will find herewith enclosed a copy of a letter to me from sir John Temple, and a copy of the petition of Richard Lawrence, which was transmitted with it. They have both been laid before Congress; and by their order the facts stated by Mr. Lawrence have been investigated.

I have also the honour of conveying to your lordship herewith enclosed office copies of the records of the three causes to which his petition alludes. They contain no such pleas as his petition describes, nor is the word treaty to be found in either of them. He plead the general issue in each of those causes; and the three juries who tried those issues, having found verdicts for the plaintiffs, judgments were given accordingly.

Why Mr. Lawrence omitted to plead the treaty, if applicable to his case, or why his defence was not so conducted as to give him every advantage in errour which the nature of it might admit of, or eventually require, are questions not interesting to the design of this letter. Your lordship will easily perceive that his representations are at least not accurate; that the judgments contained in those records must operate until legally reversed, and that they cannot be reversed but in the *ordinary* course of judicial proceedings, which is as open to Mr. Lawrence as to any other person.

Ordered, That the above report be referred back to the secretary for foreign affairs to take order.

JULY 28, 1788.

Office for Foreign Affairs, March 12, 1788.

The secretary of the United States for the department of foreign affairs, to whom was referred a letter from colonel Smith, of the 12th September last, with the papers that accompanied, reports,

That they contain a detail of occurrences and observations in the journey he made to Lisbon to deliver the letter of Congress to the queen of Portugal. It appears from them that he was well received by the court of Madrid, and favoured by the minister with a polite and friendly letter of introduction to the Spanish resident at Lisbon.

That he received particular marks of attention from the queen and her minister for foreign affairs, with whom he had much conversation respecting the treaty negotiating between that country and this.

That the queen was not much pleased that she had not been noticed by Congress in the way that her friends and neighbouring nations had.

That she was desirous of receiving a minister from the United States, and of sending one to them of any rank or degree most agreeable to them; but she did not wish that only a charge des affaires should be appointed.

That the queen would rather negotiate for a treaty at Lisbon than at London; and that this disposition rendered it probable that in such an event the obstacles which now retard it might be more easily removed.

Your secretary thinks it advisable for the United States to conclude a treaty of commerce of limited duration with Portugal; and that a minister plenipotentiary should be sent to that court, in case adequate provision can be made for the expense.

He further reports, that the conduct of colonel Smith appears to him to have been proper; and therefore in his opinion that it would be well to permit your secretary to insert the following paragraph in the next letter which he may write to the colonel.

"Your letter of the 12th September last, together "with the papers which accompanied it, have been "communicated to Congress; and in obedience to "their orders I have the pleasure of informing you, "that they are pleased with the manner in which you "appear to have treated the affairs to which those "despatches relate."

Ordered, That the last paragraph of the above report be referred to the secretary for foreign affairs to take order.

AUGUST 26, 1788.

On the report of the committee, consisting of Mr. Hamilton, Mr. Sedgwick and Mr. Madison, to whom was referred a report of the secretary for the department of foreign affairs, of the 14th instant,

Resolved, That the secretary for the department of foreign affairs be directed to transmit copies of the papers referred to in his said report to the charge des affaires of the United States at Madrid, and instruct him to represent to his catholick majesty the incon-

veniences which the states bordering on his dominions experience from the asylum afforded to fugitive negroes belonging to the citizens of the said states; and that Congress have full confidence that orders shall be given to his governours to permit and facilitate their being apprehended and delivered to persons authorized to receive them; assuring his majesty that the said states will observe the like conduct respecting all such negroes belonging to his subjects as may be found therein.

Resolved, That the said secretary be also directed to communicate the said papers to the encargado de negocios of Spain; and to signify to him, that his interposition to obtain proper regulations to be made on the subject would be very agreeable to Congress.

[Papers referred to in the above resolutions.]

Georgia.

House of Assembly, January 30, 1788.

On a motion made by Mr. William Few, the house came to the following resolution:

Whereas authentick information has been laid before this house that sundry negro slaves belonging to citizens of this state have absconded from their masters and gone to East Florida, where they are protected and detained from their rightful owners by the government of his most catholick majesty, to the great injury of the citizens of this state, contrary to the usage of nations in amity, and those principles of friendship which this state wishes to preserve with the subjects of his most catholick majesty:

Resolved, That the letter of the governour De Zespedes, dated the 12th of December, 1784, be transmitted to the delegates of this state in Congress; and that the said delegates, or either of them, be and they are hereby instructed and required, to lay a statement of the case before the United States in Congress assembled, and to move that such measures may be taken on the occasion as will redress the injured citizens of this state, and remove the cause of such complaints.

Extract from the minutes.

JAS. M. SIMMONS, Clk. G. A.

MY DEAR SIR,

The expressions of your excellency has honoured me with, in your letter of 27th of October, fills me with satisfaction, and I will certainly have the greatest pleasure at all times and on every occasion to manifest the true esteem I entertain of your excellency and your citizens.

With respect to the depredation of the English subjects in cutting of timber on the island of Cumberland, I am to say, that, as the late treaty of peace grants eighteen months to the British to evacuate this province unmolested, I cannot, during that space of time, disturb the existence of their transports in the river St. Mary's, nor at any time take notice of the excesses that the subjects of another sovereign may commit in a territory that does not belong to me.

I have procured to Mr. Coddington all the means in my power for the recovery of his negroes which might eventually have come into this province; leaving it at

his free election when recovered, to deposit them into the hands of a person of his choosing, until I receive from the court their resolution, which I have some time past applied for, concerning these identical slaves; being obliged to conform myself, until I receive new instructions, to the ancient regulations of this government, one of which prescribes not to disturb any fugitive negro from Georgia, as the court of London in that respect refused a reciprocal correspondence. At the same time I have represented to his majesty, that Georgia is differently circumstanced as not being as formerly a British colony. And I expect anxiously an answer to my representation, with a sincere desire to be authorized to comply fully with the requisitions of your excellency.

I remain with the greatest respect to your excellency, praying God preserve your life many years.

Saint Augusta, in Florida, December 12, 1784.

I kiss your excellency's hand, being your most acknowledged humble servant,

Viz Manuel de Zespedes.

His Excellency the Governour of Georgia.

SEPTEMBER 3, 1783.

The secretary for the department for foreign affairs having transmitted to Congress a letter from their high mightinesses the states general of the United Netherlands, and a memoir from Mr. Van Berckel, the minister plenipotentiary to Congress, of which the following are translations:

To the United States of America in Congress assembled.

OUR FRIENDS AND ALLIES,

Various reasons conducive to our interest have induced us to recall Mr. Van Berckel home, who has resided some time with you as our minister plenipotentiary. We trust that his conduct during his residence with you has merited your approbation, as it has fully merited ours, and that you will have the goodness to part with him in a friendly manner.

We have charged him, previous to his departure, to assure you of our continued regard for your persons and government, and of our disposition to maintain with you good friendship and intercourse. We request that you will please to give full faith to the assurances he shall make you relative thereto on our behalf, and of the continuance of our affection wherewith we conclude, our friends and allies, recommending you to God's holy protection.

At the Hague, the 8th May, 1788.

The States General of the United Netherlands.

W. N. PESTERS.

By order. H. FAGEL.

To the United States of America.

MEMOIR.

New York, August 25, 1788.

The undersigned minister plenipotentiary of the states general of the United Netherlands, has the honour to inform Congress, that he has received a resolution, by which their high mightinesses have been

pleased to recall him. He thinks it his duty to deliver the letters which his masters have addressed to him on this subject, and thereby perform without delay the last function he has to fulfil.

It is with the highest satisfaction that he perceives himself authorized to repeat the assurances of friendship and good will which he made at the commencement of his ministry; and to declare in the name of his masters, that they constantly desire to promote and confirm the harmony and good understanding which so happily subsist between the two nations.

Could their high mightinesses have been apprized of the important [change*] made by the United States in their government, they would probably have ordered the undersigned minister to testify how ardently they wish that this revolution may conduce to the grandeur, the prosperity and duration of a republick, whose success cannot fail to be exceedingly dear to them.

To these assurances of attachment and good will on the part of his masters, the undersigned minister cannot forbear to add expressions of the lively gratitude with which he is impressed by the gracious reception he has experienced during his residence for several years near Congress. He has been a witness to the efforts made by this assembly to establish the government confided to them on a solid and permanent basis. His communications to his masters have always been calculated to impress them with the importance of this object, and to cherish the friendly dispositions of their high mightinesses.

* The word revolution, it is probable, ought to be inserted.

He flatters himself that his conduct has been such as to leave no doubts respecting the purity of his intentions, and his attachment to the reciprocal interests of the two powers. It would give him the highest satisfaction to be ascertained, that his exertions have conduced to confirm the connexion, and strengthen the commercial and political relations, which one of the most happy and important of revolutions had formed between them.

May the great Arbiter of events be propitious to the measures now pursuing by all the members of the confederacy; and may the government about to be established ensure prosperity to a nation who from their origin have astonished Europe, and whose situation, internal resources and political constitution, as well as the moderation and patriotism of their councils, destine to become one of the most great, most powerful and most happy in the world.

(Signed) P. J. VAN BERCKEL.

And the said letter and memoir having been referred to the secretary for foreign affairs, who reported an answer to their high mightinesses, which was agreed to as follows:

To their high mightinesses the states general of the United Netherlands.

HIGH AND MIGHTY LORDS, OUR GOOD FRIENDS AND ALLIES,

Mr. Van Berckel, your minister plenipotentiary near us, has delivered to us your letter, dated the 8th of

May last, in which you inform us, that reasons conducive to your interest have induced you to recall him.

It gives us pleasure to find that his conduct here has fully merited your approbation, and we assure you that it has been entirely satisfactory to us. He appears to us to deserve well of both countries, and to merit proofs of the esteem of both. We are happy to receive from him by your order, such strong assurances of the continuance of your affection; and we entreat you to be persuaded that we shall constantly endeavour to render the friendship subsisting between us as permanent as it is pleasing.

We recommend you to God's holy protection and keeping.

Written by your good friends and allies the United States of America, in Congress assembled, at the city of New York, on the third day of September, 1788.

He also reported an answer to the memoir of Mr. Van Berckel, which was agreed to, and referred back to him to take order, and in the words following:

SIR,

In obedience to the orders of Congress, I have the honour to inform you, that being desirous that the most perfect harmony and friendship should subsist and continue between their high mightinesses and them, they were always solicitous that the affairs of the two countries, relative to each other, should be conducted by

men whose characters and dispositions tended to promote those great and desirable objects.

It gives them pleasure to find from the letter of the states general, that your conduct during your residence here is fully approved by their high mightinesses; and I am directed to assure you that it has been perfectly satisfactory to Congress. Every mark of confidence and esteem with which you may in future be honoured by your country will afford them satisfaction; and they sincerely wish that publick respect and domestick happiness may conspire in rendering the remainder of your days useful to others, and agreeable to yourself.

SEPTEMBER 13, 1783.

On motion of Mr. Madison, seconded by Mr. Carrington,

Resolved, That out of the fund appropriated for the redemption of the American captives at Algiers, or any other moneys belonging to the United States in Europe, the minister plenipotentiary of the United States at the court of Versailles be and he is hereby authorized, to make such provision for the maintenance and comfortable subsistence of the American captives at Algiers, and to give such orders touching the same, as shall to him appear right and proper.

That Congress approve the instructions heretofore given to Mr. Lamb, by Mr. Jefferson, their minister at the court of France, for supplying the said captives.

SEPTEMBER 16, 1788.

The secretary of the United States for the department of foreign affairs, to whom was referred his letter of the 3d instant, with an affidavit of Leonard White Outerbridge, respecting the importation of convicts from the island of New Providence to Maryland, &c. having reported,

That the facts stated in this affidavit render it in his opinion highly probable that the persons brought to and landed at Baltimore and other places, by the schooner William Henry, of which William Thompson was captain, were convicts, and that lord Dunmore, the governour of New Providence, was instrumental in their being transported to those places.

That it does not become the court of Great Britain to countenance, nor the United States to tolerate, so nefarious a practice; and although there is no reason to presume that the transportation in question was made by the orders or desire of the British government, yet he thinks it would be proper that he should be permitted to send a copy of the said affidavit, enclosed in a letter of the following tenor, to his Britannick majesty's secretary for foreign affairs.

MY LORD,

It will sometimes happen that individuals, without being authorized by the orders or encouraged by the connivance of government, do things that are not only

disreputable to their own nation, but also offensive to others.

The facts stated in an affidavit, of which I have the honour to enclose you a copy, afford reason to presume that the truth of this observation has been confirmed by a recent instance.

To insist on the impropriety of the practice which that affidavit will explain, would seem to imply doubts of its being considered in that point of light. I forbear therefore to enlarge on that topick, nor can it be necessary to hint that the same principles of honour and delicacy should obtain between nations, as between private gentlemen.

I am directed, my lord, just to make known this business to you: Congress being well persuaded that his majesty will, on receiving the information, give such orders on the occasion, as the nature of the case may require.

I ought not to omit mentioning to your lordship, that sir John Temple's conduct relative to this case has been such as receives the approbation of Congress; for instead of endeavouring to retard, he promoted the investigation.

Ordered, That this report be referred to the secretary for foreign affairs to take order.

The secretary of the United States for the department of foreign affairs, to whom was referred a motion of the honourable the delegates of North Carolina in the words following, viz. "Whereas many citizens of "the United States, who possess lands on the western "waters, have expressed much uneasiness from a re-

" port *that Congress are disposed to treat with Spain for* " *the surrender of their claim to the navigation of the* " *river Mississippi ;* in order therefore to quiet the minds " of our fellow citizens by removing such ill founded " apprehensions, resolved, that the United States have " a clear, absolute and unalienable claim to the free " navigation of the river Mississippi, which claim is " not only supported by the express stipulations of " treaties, but by the great law of nature," having on the 2d of the present month reported,

That the report mentioned in the said motion is not warranted by any part of the negotiations between the United States and Spain ; and that therefore, in his opinion, it would be expedient so far to rescind the orders of secrecy relative to those negotiations, as that the delegates of North Carolina and others be at liberty to contradict the said report in the most explicit and positive terms.

That as divers events which ought to have an influence on those negotiations have taken place since the commencement of them, and particularly the institution of a new form of national government for the United States, which is speedily to be established, it would be prudent to suspend all further progress therein ; and refer the same, with all the papers and documents respecting it, to the new government.— Wherefore he thinks it should be resolved, that the report mentioned to Congress by the delegates of North Carolina, as prevailing and causing uneasiness in the western country, viz. *that Congress are disposed to treat with Spain for the surrender of their claim to the navigation of the river Mississippi*, is not founded in

fact; and that the delegates in Congress be authorized, (their former injunctions of secrecy notwithstanding) to contradict the same in the most explicit and unequivocal terms. Resolved, that no further progress be made in the said negotiations by the secretary for foreign affairs, but that the same, in the state they now are, be referred to the federal government about to be established and organized.

Your secretary further reports, that if the aforegoing resolutions should be deemed expedient, he much doubts the propriety of adopting the one contained in the motion under consideration.

1. Because although it does impliedly, yet it does not expressly deny the truth of the report, which has created the apprehensions intended to be removed.

2. Because if the report be destroyed, by being positively contradicted, the uneasiness flowing from it must cease; which is all that appears to him necessary to be done at present; provided Congress should think it proper to suspend the progress of the negotiation, and refer it to the new government.

As to declaring and resolving that the United States have a clear, absolute and unalienable right to the navigation of the river, he thinks no objections can be derived from the nature of their right to declaring it to be clear and absolute. Authentick documents now among the papers of Congress show that he has uniformly been of opinion that the United States possess a perfect right to that navigation, and ought never to cede it. Whether it would be wise in the United States to consent, in consideration of equivalent advantages, to any and what modifications of the use of that

right, is a question on which his opinion, communicated to Congress in writing, is well known. The modifications then contemplated appeared to him at that time advisable; but he confesses that circumstances and discontents have since interposed to render it more questionable than it then appeared to be. How far the resolution proposed by North Carolina, which declares the right to be unalienable, as well as absolute, would tend to exclude all modifications, however temporary and adapted to present circumstances and convenience, merits consideration; nor is it clear to him that such exclusion would be a measure, which, however supported by right, would also be warranted by good policy. Whether that right be unalienable or not, does not depend on the nature of the title, but on the extent of the powers constitutionally vested in government. How far the present or ensuing government may be restrained or authorized in these respects, is a question of too great magnitude to be decided without deliberate and mature investigation. He knows the prejudices and opinions prevailing in the western country respecting whatever may concern that navigation; and he knows also that groundless though not unnatural jealousies are also entertained of him respecting it; but as personal considerations ought not to influence his publick conduct, he thinks it his duty to report in plain terms, that any resolution calculated to exclude the possibility of such modifications, as without impairing the right, might be advantageous to the United States, and satisfactory to the citizens, would not in his opinion be wise. Whether such modifications could be formed he will not attempt to

conjecture. Certain it is that the probability of it will become greater and increase as the population of those countries advances, and as the respectability of the United States rises in the estimation of Spain and other foreign nations.

He therefore thinks it best to let these negotiations pass over in their present state to the new government, who will undoubtedly be tenacious of the publick rights, and may be enabled, by *circumstances not yet developed*, to terminate these negotiations with Spain in a manner perfectly consistent with the right in question, and with the interests and wishes of their constituents.

The same was referred to a committee; and,

On the report of the committee, consisting of Mr. Hamilton, Mr. Madison, Mr. Williamson, Mr. Dane and Mr. Edwards, to whom was referred the report of the secretary for foreign affairs on a motion of the delegates of North Carolina, stating the uneasiness produced by a report "*that Congress are disposed to* "*treat with Spain for the surrender of their claim to the* "*navigation of the river Mississippi*," and proposing a resolution intended to remove such apprehensions,

Resolved, That the said report, not being founded in fact, the delegates be at liberty to communicate all such circumstances as may be necessary to contradict the same, and to remove misconceptions.

Resolved, That the free navigation of the river Mississippi is a clear and essential right of the United States, and that the same ought to be considered and supported as such.

Resolved, That no further progress be made in the negotiations with Spain, by the secretary for foreign affairs; but that the subject to which they relate be referred to the federal government, which is to assemble in March next.

THE END.